

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 13/11/2017 1:22:00 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID1228/2017
File Title: FRIENDS OF LEADBEATER'S POSSUM INC v VICFORESTS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 14/11/2017 9:22:08 AM AEDT

A handwritten signature in blue ink that reads 'Warwick Soden'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17
Rule 8.05(1)(a)

STATEMENT OF CLAIM

Federal Court of Australia
District Registry: Victoria
Division: ACLHR

No of 2017

FRIENDS OF LEADBEATER'S POSSUM INC

Applicant

VICFORESTS

Respondent

1. The Applicant:

1.1 is an association incorporated under the *Associations Incorporation Reform Act* 2012 (Vic) in Australia;

1.2 during the two years immediately before the conduct to which the relief sought in the Applicant's originating application relates:

- (a) has had objects or purposes that included the protection or conservation of, or research into, the environment; and
- (b) has engaged in a series of activities related to the protection or conservation of, or research into, the environment.

1.3 during the two years immediately before the Applicant's application:

- (a) has had objects or purposes that included the protection or conservation of, or research into, the environment; and

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(b) has engaged in a series of activities related to the protection or conservation of, or research into, the environment.

2. The Respondent (**VicForests**) is a State body established in 2003 under s 14 of the *State Owned Enterprises Act 1992* (Vic).

VicForests functions

3. The principal function of VicForests is to undertake, on a commercial basis, the sale and supply of timber resources in Victorian State forests.

4. As part of the principal function of VicForests identified in paragraph 3 above, VicForests plans and conducts, from time to time, the logging of specified areas of Victorian State forests.

5. One of the areas of Victorian State forest in which VicForests plans and conducts logging operations is the part of Victoria designated as the Central Highlands Regional Forest Agreement Area (the **CH RFA Area**).

Timber Release Plan for the Central Highlands RFA Area

6. In January 2017, VicForests prepared an “Approved Timber Release Plan Change” (the **Timber Release Plan**), which identified, by map, schedule and coupe number, areas of forest in the CH RFA Area, which are proposed for logging.

6.1 The Timber Release Plan includes a number of maps and a schedule, which together identify the areas proposed for logging as individual “coupes”, each of which coupes is designated by an identification number.

6.2 The Timber Release Plan maps designate, among other things, the boundary, location and identification number of each coupe.

6.3 The Timber Release Plan schedule designates, among other things:

(a) each coupe identification number;

(b) the net area in hectares expected to be logged within each coupe boundary;

- (c) the method of logging that will be used in each coupe, termed the “silviculture system”;
- (d) the nominated period in which logging is proposed in each coupe; and
- (e) the operational status of each coupe, indicating either that logging has been completed, that logging has commenced but not completed or that logging has not yet commenced.

7. On 5 January 2017, VicForests published:

7.1 Notice of the “Timber Release Plan Change”, as approved by VicForests, in the Victoria Government Gazette; and

7.2 the Timber Release Plan maps and schedule on the VicForests website.

8. The identification of coupes proposed for logging in the CH RFA Area by preparation of the Timber Release Plan constitutes an action for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the **EPBC Act**).

Coupes that have been clear-felled

9. Between 2004 and 2017, VicForests clear-felled the following coupes within the CH RFA Area which are identified in the Timber Release Plan:

Nolans Gully logged coupes

9.1 297-511-0001 (Blowhard Dam);

9.2 297-511-0003 (Crawler);

Coles Creek logged coupes

9.3 297-538-0001 (Big Bull Fiddle);

9.4 297-538-0002 (Skinny Jim);

Mount Despair logged coupes

9.5 298-516-0001 (Glenview);

9.6 298-519-0003 (Flicka);

Kalatha Creek logged coupe

9.7 298-874-0003 (Big Kahuna);

Beech Creek logged coupes

9.8 300-537-0005 (Makulu);

Hermitage Creek logged coupe

9.9 300-941-0008 (Murrindindi Headwaters);

9.10 307-003-0024 (Anderson Mill);

9.11 307-505-0002 (Giant);

9.12 307-505-0011 (Guitar Solo);

Acheron logged coupes

9.13 309-507-0001 (Mont Blanc);

9.14 309-507-0003 (Kenya);

9.15 309-507-0004 (The Eiger);

The Triangle logged coupe

9.16 317-508-0008 (Professor Xavier);

Ada Tree logged coupe

9.17 344-509-0009 (Ginger Cat);

9.18 348-506-0003 (Blue Vein);

Starlings Gap logged coupes

9.19 345-503-0005 (Bullseye);

9.20 345-505-0006 (Hairy Hyde);

9.21 345-506-0004 (Opposite Fitzies);

9.22 347-501-0005 (Big Blacksands Creek);

9.23 348-510-0008 (Return of the Tippy);

9.24 348-537-0005 (Tom Bowler);

New Turkey Spur logged coupe

9.25 348-515-0004 (Greendale);

Ada River logged coupes

9.26 348-517-0005 (Tarzan);

9.27 348-517-0006 (Jane);

9.28 348-517-0007 (Bomba);

9.29 348-517-0009 (Apeman);

Loch logged coupes

9.30 462-507-0008 (Estate);

Salvage Creek logged coupe

9.31 463-504-0009 (De Valera); and

Baw Baw logged coupe

9.32 483-505-0002 (Rowels),

(together, the **logged coupes**).

Proposed clear-felling

10. The Approved Timber Release Plan shows that the following coupes are scheduled to be clear-felled between 2017 and 2018 within the CH RFA Area:

Nolans Gully scheduled coupes

10.1 297-505-0001 (Goliath);

10.2 297-509-0001 (Shrek);

10.3 297-509-0002 (Infant);

10.4 297-511-0002 (Junior);

Sylvia Creek scheduled coupes

10.5 297-526-0001 (Gun Barrel);

10.6 297-530-0001 (Imperium);

10.7 297-530-0002 (Utopia);

Coles Creek scheduled coupe

10.8 297-538-0004 (Home & Away);

Mount Despair scheduled coupes

10.9 298-502-0003 (Chest);

10.10 298-510-0003 (Bridle);

Kalatha Creek scheduled coupe

10.11 298-509-0001 (South Col);

Beech Creek scheduled coupes

10.12 300-524-0002 (Waves);

10.13 300-539-0001 (Surfing);

Hermitage Creek scheduled coupes

10.14 307-505-0001 (Drum Circle);

10.15 307-505-0009 (Flute);

10.16 307-505-0010 (San Diego);

Acheron scheduled coupe

10.17 309-507-0007 (White House);

Torbreck River scheduled coupes

10.18 312-007-0014 (Skupani);

10.19 312-508-0002 (Splinter);

10.20 312-503-0002 (Bhebe);

Salvage Creek scheduled coupe

10.21 344-501-0014 (Salvage Creek);

Ada Tree Scheduled coupe

10.22 344-509-0007 (Blue Cat);

Starlings Gap scheduled coupes

10.23 345-504-0003 (Smyth Creek);

10.24 345-504-0005 (Starlings Gap);

10.25 345-505-0006 (Hairy Hyde);

10.26 345-505-0009 (Blacksands Road);

Mount Bride scheduled coupes

10.27 345-526-0003 (Louisiana);

10.28 345-526-0004 (Bourbon Street);

New Turkey Spur scheduled coupe

10.29 348-504-0005 (Gallipoli);

Ada River scheduled coupes

10.30 348-518-0004 (Johnny);

10.31 348-519-0008 (Turducken);

Noojee scheduled coupe

10.32 462-504-0009 (Epiphanie);

Loch scheduled coupe

10.33 462-507-0009 (Jakop); and

Baw Baw scheduled coupe

10.34 483-505-0018 (Diving Spur),

(together, the **scheduled coupes**).

Leadbeater's Possum and Greater Glider are listed threatened species under the EPBC Act

11. The CH RFA Area is the home to, among other species of fauna, populations of Leadbeater's Possum (*Gymnobelideus leadbeateri*) and Greater Glider (*Petauroides Volans*).

Particulars

- (a) Sightings of the Leadbeater's Possum in the CH RFA Area are recorded in a Geographic Information System (**GIS**) file maintained by the Victorian Government Department of Environment, Land, Water and Planning carrying the filename "LBPAG_SITES_CHRFA" and which can be viewed on the internet at the Victorian Government website titled "Leadbeater's Possum Interactive Map" located at lbp.cerdi.edu.au/possum_map.php.
- (b) Sightings of the Greater Glider in the CH RFA Area have been recorded by observers in video footage, still photographs and by the recording of sighting locations of Greater Gliders on handheld Global Positioning System (**GPS**) devices, creating a point location GIS file.

Records of the sightings of the Greater Glider in the CH RFA Area may be inspected at the office of the Applicant's solicitor during standard business hours.

- (c) Some sightings of the Greater Glider in the CH RFA Area are recorded in two GIS files maintained by the Victorian Government Department of Environment, Land, Water and Planning carrying the filenames "VBA_FAUNA25" and "VBA_FAUNA100" and which can be obtained via the Victorian Government website located at www.data.vic.gov.au.
12. On 11 July 2000, the Minister for the Environment and Heritage declared Leadbeater's Possum to be listed as a threatened species in the endangered category by declaration under s 178 of the EPBC Act.
 13. On 22 April 2015, the Minister for the Environment approved a conservation advice and transferred the Leadbeater's Possum to the critically endangered category under the EPBC Act, with effect from 2 May 2015.
 14. On 25 May 2016, the Minister for the Environment included the Greater Glider as a threatened species in the vulnerable category under the EPBC Act, with effect from 5 May 2016.
 15. In consequence of the listing of the Leadbeater's Possum as a threatened species in the endangered, and critically endangered, categories under the EPBC Act, the taking of an action that is likely to have a significant impact on the Leadbeater's Possum is prohibited by s 18(2)(b) of the EPBC Act unless:
 - 15.1 there is an approval in place for that action under Part 9 of the EPBC Act: s 19 of the EPBC Act; or
 - 15.2 the action is a Regional Forest Agreement forestry operation undertaken in accordance with a Regional Forest Agreement (**RFA**): s 38(1) of the EPBC Act and s 6(4) of the *Regional Forest Agreements Act 2002* (Cth) (the **RFA Act**).

16. In consequence of the listing of the Greater Glider as a threatened species in the vulnerable category under the EPBC Act, the taking of an action that is likely to have a significant impact on the Greater Glider is prohibited by s 18(4)(b) of the EPBC Act unless:

16.1 there is an approval in place for that action under Part 9 of the EPBC Act: s 19 of the EPBC Act; or

16.2 the action is a RFA forestry operation undertaken in accordance with a RFA: s 38(1) of the EPBC Act and s 6(4) of the RFA Act.

Past logging has, is or is likely to have a significant impact on the Leadbeater's Possum

17. The logging of each of the logged coupes was an action.

18. The logging of the Nolan's Gully logged coupes 9.1 and 9.2:

18.1 has had,

18.2 is having,

18.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

There is a real chance that the logging of these coupes has, is or is likely to:

- (a) lead to a long-term decrease in the size of the population of the Leadbeater's Possum;
- (b) reduce the area of occupancy of the Leadbeater's Possum;
- (c) fragment an existing population of Leadbeater's Possum into two or more populations;
- (d) adversely affect habitat critical to the survival of the Leadbeater's Possum;
- (e) disrupt the breeding cycle of Leadbeater's Possums;

- (f) modify, destroy, remove, isolate, or decrease the availability or quality of habitat to the extent that the Leadbeater's Possum is likely to decline;
- (g) interfere with the recovery of the Leadbeater's Possum.

19. The logging of the Coles Creek logged coupes 9.3 and 9.4:

19.1 has had,

19.2 is having,

19.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Coles Creek logged coupes 9.3 and 9.4.

20. The logging of the Kalatha Creek logged coupe 9.7:

20.1 has had,

20.2 is having,

20.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Kalatha Creek logged coupe 9.7.

21. The logging of the Beech Creek logged coupe 9.8:

21.1 has had,

21.2 is having,

21.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Beech Creek logged coupe 9.8.

22. The logging of the Hermitage Creek logged coupes 9.9 – 9.12:

22.1 has had,

22.2 is having,

22.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Hermitage Creek logged coupes 9.9 – 9.12.

23. The logging of the Triangle logged coupe 9.16:

23.1 has had,

23.2 is having,

23.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Triangle logged coupe 9.16.

24. The logging of the Ada Tree logged coupes 9.17 and 9.18:

24.1 has had,

24.2 is having,

24.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Ada Tree logged coupes 9.17 and 9.18.

25. The logging of the Starlings Gap logged coupes 9.19 – 9.24:

25.1 has had,

25.2 is having,

25.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Starlings Gap logged coupes 9.19 – 9.24.

26. The logging of the New Turkey Spur logged coupe 9.25:

26.1 has had,

26.2 is having,

26.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the New Turkey Spur logged coupe 9.25.

27. The logging of the Ada River logged coupes 9.26 – 9.29:

27.1 has had,

27.2 is having,

27.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Ada River logged coupes 9.26 – 9.29.

28. The logging of the Salvage Creek logged coupe 9.31:

28.1 has had,

28.2 is having,

28.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Salvage Creek logged coupe 9.31.

29. The logging of the Baw Baw logged coupe 9.32:

29.1 has had,

29.2 is having,

29.3 is likely to have,

a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 18 above, and says that the particulars apply to the Baw Baw logged coupe 9.32.

30. The logging of the logged coupes identified at paragraphs 18-29 above:

30.1 has had,

30.2 is having,

30.3 is likely to have,

a significant impact on the Leadbeaters' Possum.

Particulars

The Applicant refers to and repeats the particulars in paragraphs 18-29 above.

Past logging has, is or is likely to have a significant impact on the Greater Glider

31. The logging of each of the logged coupes was an action.

32. The logging of the Mount Despair logged coupes 9.5 and 9.6:

32.1 has had,

32.2 is having,

32.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

There is a real chance that the logging of these coupes has, is or is likely to:

(a) lead to a long-term decrease in the size of an important population of Greater Glider;

(b) reduce the area of occupancy of an important population of Greater Glider;

- (c) fragment an important population of Greater Glider into two or more populations;
- (d) adversely affect habitat critical to the survival of the Greater Glider;
- (e) disrupt the breeding cycle of an important population of Greater Gliders;
- (f) modify, destroy, remove, isolate, or decrease the availability or quality of habitat to the extent that the Greater Glider is likely to decline;
- (g) interfere substantially with the recovery of the Greater Glider.

33. The logging of the Hermitage Creek logged coupe 9.12:

33.1 has had,

33.2 is having,

33.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 32 above, and says that the particulars apply to the Hermitage Creek logged coupe 9.12.

34. The logging of the Acheron logged coupes 9.13 – 9.15:

34.1 has had,

34.2 is having,

34.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 32 above, and says that the particulars apply to the Acheron logged coupes 9.13 - 9.15.

35. The logging of the Ada Tree logged coupes 9.17 and 9.18:

35.1 has had,

35.2 is having,

35.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 32 above, and says that the particulars apply to the Ada Tree logged coupe 9.17 and 9.18.

36. The logging of the Starlings Gap logged coupe 9.20:

36.1 has had,

36.2 is having,

36.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 32 above, and says that the particulars apply to the Starlings Gap logged coupe 9.20.

37. The logging of the Ada River logged coupe 9.26:

37.1 has had,

37.2 is having,

37.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 32 above, and says that the particulars apply to the Ada River logged coupe 9.26.

38. The logging of the Loch logged coupe 9.30:

38.1 has had,

38.2 is having,

38.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 32 above, and says that the particulars apply to the Loch logged coupe 9.30.

39. The logging of the Baw Baw logged coupe 9.32:

39.1 has had,

39.2 is having,

39.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 32 above, and says that the particulars apply to the Baw Baw logged coupe 9.32.

40. The logging of the coupes identified at paragraphs 32-39 above:

40.1 has had,

40.2 is having,

40.3 is likely to have,

a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars in paragraphs 32-39 above.

Scheduled logging is likely to have a significant impact on the Leadbeater's Possum

41. The logging of each of the scheduled coupes will be an action.

42. The logging of the Nolan's Gully coupe 10.1, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

There is a real chance that the logging of this coupe will or is likely to:

- (a) lead to a long-term decrease in the size of the population of Leadbeater's Possum;
- (b) reduce the area of occupancy of Leadbeater's Possum;
- (c) fragment an existing population of Leadbeater's Possum into two or more populations;
- (d) adversely affect habitat critical to the survival of Leadbeater's Possum;
- (e) disrupt the breeding cycle of Leadbeater's Possums;
- (f) modify, destroy, remove, isolate, or decrease the availability or quality of habitat to the extent that Leadbeater's Possum is likely to decline;
- (g) interfere with the recovery of the Leadbeater's Possum.

43. The logging of the Nolan's Gully coupe 10.2, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Nolan's Gully coupe 10.2.

44. The logging of the Nolan's Gully coupe 10.3, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Nolan's Gully coupe 10.3.

45. The logging of the Nolan's Gully coupe 10.4, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Nolan's Gully coupe 10.4.

46. The logging of the Sylvia Creek coupe 10.5, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Sylvia Creek coupe 10.5.

47. The logging of the Sylvia Creek coupe 10.6, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Sylvia Creek coupe 10.6.

48. The logging of the Sylvia Creek coupe 10.7, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Sylvia Creek coupe 10.7.

49. The logging of the Coles Creek coupe 10.8, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Coles Creek coupe 10.8.

50. The logging of the Kalatha Creek coupe 10.11, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Kalatha Creek coupe 10.11.

51. The logging of the Beech Creek coupe 10.12, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Beech Creek coupe 10.12.

52. The logging of the Beech Creek coupe 10.13, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Beech Creek coupe 10.13.

53. The logging of the Hermitage Creek coupe 10.14, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Hermitage Creek coupe 10.14.

54. The logging of the Hermitage Creek coupe 10.15, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Hermitage Creek coupe 10.15.

55. The logging of the Hermitage Creek coupe 10.16, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Hermitage Creek coupe 10.16.

56. The logging of the Torbreck River coupe 10.18, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Torbreck River coupe 10.18.

57. The logging of the Torbreck River coupe 10.19, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Torbreck River coupe 10.19.

58. The logging of the Torbreck River coupe 10.20, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Torbreck River coupe 10.20.

59. The logging of the Salvage Creek coupe 10.21, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Salvage Creek coupe 10.21.

60. The logging of the Ada Tree coupe 10.22, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Ada Tree coupe 10.22.

61. The logging of the Starlings Gap coupe 10.23, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Starlings Gap coupe 10.23.

62. The logging of the Starlings Gap coupe 10.24, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Starlings Gap coupe 10.24.

63. The logging of the Starlings Gap coupe 10.25, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Starlings Gap coupe 10.25.

64. The logging of the Starlings Gap coupe 10.26, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Starlings Gap coupe 10.26.

65. The logging of the Mount Bride coupe 10.27, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Mount Bride coupe 10.27.

66. The logging of the Mount Bride coupe 10.28, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Mount Bride coupe 10.28.

67. The logging of the New Turkey Spur coupe 10.29, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the New Turkey Spur coupe 10.29.

68. The logging of the Ada River coupe 10.30, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Ada River coupe 10.30.

69. The logging of the Ada River coupe 10.31, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Ada River coupe 10.31.

70. The logging of the Baw Baw coupe 10.34, is likely to have a significant impact on the Leadbeater's Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraph 42 above, and says that the particulars apply to the Baw Baw coupe 10.34.

71. The proposed logging of the scheduled coupes identified at paragraphs 42-70 above is likely to have a significant impact on the Leadbeaters' Possum.

Particulars

The Applicant refers to and repeats the particulars at paragraphs 42-70 above.

Scheduled logging is likely to have a significant impact on the Greater Glider

72. The logging of each of the scheduled coupes will be an action.
73. The logging of the Nolan's Gully coupe 10.1, is likely to have a significant impact on the Greater Glider.

Particulars

There is a real chance that the logging of this coupe will or is likely to:

- (a) lead to a long-term decrease in the size of an important population of Greater Glider;
- (b) reduce the area of occupancy of an important population of Greater Glider;
- (c) fragment an important population of Greater Glider into two or more populations;
- (d) adversely affect habitat critical to the survival of the Greater Glider;
- (e) disrupt the breeding cycle of an important population of Greater Gliders;
- (f) modify, destroy, remove, isolate, or decrease the availability or quality of habitat to the extent that the Greater Glider is likely to decline;
- (g) interfere substantially with the recovery of the Greater Glider.

74. The logging of the Nolan's Gully coupe 10.2, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Nolan's Gully coupe 10.2.

75. The logging of the Nolan's Gully coupe 10.3, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Nolan's Gully coupe 10.3.

76. The logging of the Nolan's Gully coupe 10.4, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Nolan's Gully coupe 10.4.

- 77. The logging of the Sylvia Creek coupe 10.5, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Sylvia Creek coupe 10.5.

- 78. The logging of the Sylvia Creek coupe 10.6, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Sylvia Creek coupe 10.6.

- 79. The logging of the Sylvia Creek coupe 10.7, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Sylvia Creek coupe 10.7.

- 80. The logging of the Coles Creek coupe 10.8, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Coles Creek coupe 10.8.

- 81. The logging of the Mount Despair coupe 10.9, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Mount Despair coupe 10.9.

82. The logging of the Mount Despair coupe 10.10, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Mount Despair coupe 10.10.

83. The logging of the Kalatha Creek coupe 10.11, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Kalatha Creek coupe 10.11.

84. The logging of the Beech Creek coupe 10.12, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Beech Creek coupe 10.12.

85. The logging of the Beech Creek coupe 10.13, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Beech Creek coupe 10.13.

86. The logging of the Hermitage Creek coupe 10.14, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Hermitage Creek coupe 10.14.

87. The logging of the Hermitage Creek coupe 10.15, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Hermitage Creek coupe 10.15.

88. The logging of the Hermitage Creek coupe 10.16, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Hermitage Creek coupe 10.16.

89. The logging of the Acheron coupe 10.17, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Acheron coupe 10.17.

90. The logging of the Torbreck River coupe 10.18, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Torbreck River coupe 10.18.

91. The logging of the Torbreck River coupe 10.19, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Torbreck River coupe 10.19.

92. The logging of the Torbreck River coupe 10.20, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Torbreck River coupe 10.20.

93. The logging of the Starlings Gap coupe 10.23, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Starlings Gap coupe 10.23.

94. The logging of the Starlings Gap coupe 10.24, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Starlings Gap coupe 10.24.

95. The logging of the Starlings Gap coupe 10.25, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Starlings Gap coupe 10.25.

96. The logging of the Starlings Gap coupe 10.26, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Starlings Gap coupe 10.26.

97. The logging of the Mount Bride coupe 10.27, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Mount Bride coupe 10.27.

98. The logging of the Mount Bride coupe 10.28, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Mount Bride coupe 10.28.

99. The logging of the New Turkey Spur coupe 10.29, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the New Turkey Spur coupe 10.29.

100. The logging of the Ada River coupe 10.30, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Ada River coupe 10.30.

101. The logging of the Ada River coupe 10.31, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Ada River coupe 10.31.

102. The logging of the Noojee coupe 10.32, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Noojee coupe 10.32.

103. The logging of the Loch coupe 10.33, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Loch coupe 10.33.

104. The logging of the Baw Baw coupe 10.34, is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraph 73 above, and says that the particulars apply to the Baw Baw coupe 10.34.

105. The proposed logging of the scheduled coupes identified at paragraphs 73-104 above is likely to have a significant impact on the Greater Glider.

Particulars

The Applicant refers to and repeats the particulars at paragraphs 73-104 above.

No approval under Part 9 of the EPBC Act

106. At the time of the logging of the logged coupes, there was no approval in operation under Part 9 of the EPBC Act for the harvesting of trees in the logged coupes.

107. There is no approval in operation under Part 9 of the EPBC Act for the harvesting of trees in the scheduled coupes.

Logging is not in accordance with a Regional Forestry Agreement

108. On 27 March 1998, the State of Victoria and the Commonwealth of Australia entered into the Central Highlands Regional Forest Agreement (the **CH RFA**) in respect of the CH RFA Area.

109. The CH RFA is a RFA for the purpose of the RFA Act.

110. The logging of the logged coupes was a forestry operation for the purposes of the RFA Act.

111. The proposed logging of the scheduled coupes is a forestry operation for the purposes of the RFA Act.

112. The:

112.1 logging of the logged coupes; and

112.2 the proposed logging of the scheduled coupes

was not, and is not, in accordance with the CH RFA.

Particulars

(a) Clause 5 of the CH RFA provides that the CH RFA will remain in force for 20 years. The expiry date for the CH RFA is 27 March 2018.

(b) Clause 36 of the CH RFA provides that, every five years, a review of the performance of the CH RFA will be undertaken.

(c) The first five-yearly review for the CH RFA, which was due to be undertaken by 27 March 2003;

(i) has not been undertaken; or

(ii) alternatively, was not undertaken until in or about June 2015.

- (d) The second five-yearly review for the CH RFA, which was due to be undertaken by 27 March 2008;
 - (i) has not been undertaken; or
 - (ii) alternatively, was not undertaken until in or about June 2015.
- (e) The third five-yearly review for the CH RFA, which was due to be undertaken by 27 March 2013, has not been undertaken.
- (f) In consequence of the failure to undertake:
 - (i) the first and second five-yearly reviews until in or about June 2015 for the CH RFA; or
 - (ii) the first, second, and third five-yearly reviews for the CH RFA; or
 - (iii) the third five-yearly review for the CH RFA,
forestry operations in the CH RFA Area:
 - (iv) have not been undertaken in accordance with the CH RFA since:
 - (i) 27 March 2003; or
 - (ii) 27 March 2008; or
 - (iii) 27 March 2013;
 - (v) are not now being undertaken in accordance with the CH RFA; and
 - (vi) cannot in the future be undertaken in accordance with the CH RFA.

113. Because the:

113.1 logging of the logged coupes; and

113.2 the proposed logging of the scheduled coupes;

is not in accordance with the CH RFA, those forestry operations are not exempt from the application of Part 3 of the EPBC Act, pursuant to either s 38(1) of the EPBC Act or s 6(4) of the RFA Act.

Past logging is a contravention of the EPBC Act

114. By reason of the matters in paragraphs 9, 11-13, 17-29, 106, 108-113 above, the logging of each of the logged coupes was a contravention of:

114.1 s 18(2)(b) of the EPBC Act; and

114.2 s 18(4)(b) of the EPBC Act.

115. By reason of the matters in paragraphs 9, 11, 14, 31-39, 106, 108-113 above, the logging of each of the logged coupes was a contravention of:

115.1 s 18(2)(b) of the EPBC Act; and

115.2 s 18(4)(b) of the EPBC Act.

116. Alternatively, by reason of the matters in

116.1 paragraphs 9, 11-13, 30, 106, 108-113 above, and

116.2 paragraphs 9, 11, 14, 40, 106, 108-113;

the logging of the logged coupes, was a contravention of:

116.3 s 18(2)(b) of the EPBC Act; and

116.4 s 18(4)(b) of the EPBC Act.

Proposed logging is a contravention of the EPBC Act

117. By reason of the matters in paragraphs 8, 10, 11-13, 41-70, 107-113 above, the proposed logging of each of the relevant coupes, if undertaken, will be a contravention of:

117.1 s 18(2)(b) of the EPBC Act; and

117.2 s 18(4)(b) of the EPBC Act.

118. By reason of the matters in paragraphs 8, 10, 11, 14, 72-104, 107-113 above, the proposed logging of each of the relevant coupes, if undertaken, will be a contravention of:

118.1 s 18(2)(b) of the EPBC Act; and

118.2 s 18(4)(b) of the EPBC Act.

119. Alternatively, by reason of the matters in:

119.1 paragraphs 8, 10, 11-13, 71, 107-113;

119.2 paragraphs 8, 10, 11, 14, 105, 107-113;

the proposed logging of the relevant coupes will be a contravention of:

119.3 s 18(2)(b) of the EPBC Act; and

119.4 s 18(4)(b) of the EPBC Act.

Claim for relief

120. The Applicant claims the following relief:

1. An injunction pursuant to s 475(2) of the EPBC Act restraining the Respondent from:
 - (a) undertaking; or
 - (b) authorising;any forestry operations in the scheduled coupes in contravention of s 18 of the EPBC Act.
2. An order pursuant to s 475(3) of the EPBC Act that the Respondent set aside an area of forest that is protected from logging in order to mitigate the significant impact on the Leadbeater's Possum caused by the Respondent's contraventions of s 18 of the EPBC Act.
3. An order pursuant to s 475(3) of the EPBC Act that the Respondent set aside an area of forest that is protected from logging in order to mitigate the significant impact on the Greater Glider caused by the Respondent's contraventions of s 18 of the EPBC Act.
4. Costs.
5. Such further or other relief as the Court considers just.

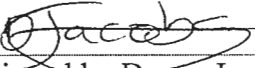
121. The Applicant also claims interlocutory relief.

1. An interim injunction pursuant to s 475(5) of the EPBC Act restraining the Respondent from undertaking or authorising any forestry operations in the scheduled coupes until further order.

PETER HANKS

JULIA WATSON

Date: 13 November 2017


Signed by Danya Jacobs

Environmental Justice Australia


Lawyer for the Applicant

This pleading was prepared by Danya Jacobs, lawyer.

Certificate of lawyer

I Danya Jacobs, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 13 November 2017


Signed by Danya Jacobs

Environmental Justice Australia

Lawyer for the Applicant