

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: VID1228/2017  
File Title: FRIENDS OF LEADBEATER'S POSSUM INC v VICFORESTS  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 23/04/2018 6:41:47 PM AEST

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

Registrar

### Important Information

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Form 59  
Rule 29.02(1)

**Affidavit**

No. VID 1228 of 2017

Federal Court of Australia  
District Registry: Victoria  
Division: ACLHR

**FRIENDS OF LEADBEATER'S POSSUM INC**

Applicant

**VICFORESTS**

Respondent

Affidavit of: Danya Jacobs  
Address: Level 3, 60 Leicester Street CARLTON VIC 3053  
Occupation: Australian Legal Practitioner  
Date: 23 April 2018

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Filed on behalf of (name & role of party) Friends of Leadbeater’s Possum Inc, the Applicant  
 Prepared by (name of person/lawyer) Danya Jacobs  
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I, Danya Jacobs, Australian Legal Practitioner, affirm:

1. I am an employee lawyer at the law practice Environmental Justice Australia and, subject to the supervision of my principal, I have the care and conduct of this proceeding on behalf of the Applicant. I am authorised to make this affidavit on the Applicant's behalf in support of its application for an interlocutory injunction.
2. I make this Affidavit in my professional capacity from my own personal knowledge save where stated to be true to the best of my knowledge, information and belief, based on my inquiries of relevant persons.
3. I refer to my affidavit affirmed 15 November 2017 (my **First Affidavit**), in particular the content of paragraphs 3-5 (Central Highlands Regional Forest Agreement) and 13-21 (Scheduled Logging Operations – Timber Release Plan, Greater Glider) thereof, and adopt the definitions therein.

**The Code of Practice for Timber Production**

4. In or about October 2014, the then Minister for Environment and Climate Change made, approved and published under the *Conservation, Forests and Lands Act 1987 (Vic)* (the **CFL Act**) the *Code of Practice for Timber Production 2014* (the **Code**), and two documents that are incorporated into the Code under Section 31(2) of the CFL Act, being the *Management Standards and Procedures for timber harvesting operations in Victoria's State forests 2014* (the **Management Procedures**), and *Appendix 5 to Management Standards and Procedures for timber harvesting operations in Victoria's State forests 2014: the Planning Standards and Procedures for Timber harvesting operations in State Forests 2014* the *Planning Standards for timber harvesting operations in Victoria's State forests 2014* (the **Planning Standards**). Now produced and shown to me and marked DJ-

28 is a true copy of the Code, marked DJ-29 is a true copy of the Management Procedures, and marked DJ-30 is a true copy of the Planning Standards.

5. The Code is the current and consolidated version of the former Code of Forest Practices 1996 referred to at clauses 2, 3(d) and 47 of the CH RFA, which is no longer in force.
6. The Department of Environment, Land, Water and Planning (**DELWP**) was formerly and at the time the Code was made, named the Department of Environment and Primary Industries (**DEPI**). There is no current Victorian Government Department named DEPI. I understand that the references in the Code to DEPI are now references to DELWP.
7. The Code requires, among other things, that VicForests comply with a number of “mandatory actions”, including the following:
  - (a) Planning and management of timber harvesting operations must comply with relevant biodiversity conservation measures specified within the Management Standards and Procedures. (CI 2.2.2.1)
  - (b) The precautionary principle must be applied to the conservation of biodiversity values. The application of the precautionary principle will be consistent with relevant monitoring and research that has improved the understanding of the effects of forest management on forest ecology and conservation values. (CI 2.2.2.2)
8. There is no biodiversity conservation measure specified for the Greater Glider in the CH RFA area within the Management Standards and Procedures. Both the Code and the Management Standards and Procedures were published in October 2014, prior to the listing of the Greater Glider as a threatened species under the EPBC Act on 5 May 2016 and under the FFG Act on 14 June 2017.

#### **Recovery Plan**

9. On 21 April 2018, I visited the Commonwealth Department of the Environment and Energy web page titled “Species Profile and Threats Database *Petauroides volans* – Greater

Glider” at the URL [http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon\\_id=254](http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=254). The web page includes that:

*“Recovery Plan Decision: Recovery Plan required, stopping decline and supporting recovery is complex, due to the requirement for a high level of planning to abate the threats [sic], a high level of support by key stakeholders, a high level of prioritisation and a highly adaptive management process. Existing mechanisms are not adequate to address these needs (3/05/2016).*

*Adopted/Made Recovery Plans: There is no adopted or made Recovery Plan for this species”*

Now produced and shown to me and marked **DJ-31** is a true copy of this webpage.

#### **Action Statement**

10. On 21 April 2018, I accessed the Victorian **DELWP** website titled “Action Statements” at the URL <https://www.environment.vic.gov.au/conserving-threatened-species/flora-and-fauna-guarantee-act-1988/action-statements>. The web page includes a list of, and links to, Approved action statements. No action statement for the Greater Glider appears on this webpage. I accessed and searched other Victorian Government websites but did not locate an action statement for the Greater Glider, or any further information indicating that such an action statement has been prepared. On that basis, and as I am unaware of publication anywhere else, it is my understanding that no action statement has been prepared for the species.

#### **The FMP**

11. The Code includes the following,

*“The Management Standards and Procedures are informed by relevant policy documents including policies relating to specific forest values such as threatened species, guidelines and strategies within forest management plans made under the Forest Act 1958 and*

*Action Statements made under the Flora and Fauna Guarantee Act 1988...*" (p24).  
(emphasis added)

12. In or about 1998 a Forest Management Plan for the Central Highlands (the **Central Highlands FMP**) was published. The Central Highlands FMP is a working plan made under s 22 of the *Forests Act 1958* (Vic). The area subject of the Central Highlands FMP comprises the Central Highlands RFA area. The Central Highlands FMP does not specify any prescription for the Greater Glider.

Now produced and shown to me and marked **DJ-32** is a true copy of the Central Highlands FMP.

#### **Prescription Comparator**

13. There is a biodiversity conservation measure specified for the Greater Glider in the East Gippsland RFA area within the Management Standards and Procedures. This measure is informed by, and in substance the same as, a prescription for the Greater Glider specified in the East Gippsland Forest Management Plan published in 1995. This biodiversity conservation measure is a prescription in the form of a detection-based Forest Management Zone rule that applies in the East Gippsland Forest Management Area (which coincides with the East Gippsland RFA area); as follows:

*"Establish a SPZ of approximately 100 ha of suitable habitat where verified records report more than 2 individuals per hectare, more than 10 individuals per km or more than 15 individuals per hour of spotlighting, or where substantial populations are located in isolated or unusual habitat",* (p43, Planning Standards).

#### **Impacts of logging on the Greater Glider**

14. I refer to and adopt paragraphs 18 to 21 of my First Affidavit.



## VicForests' representations concerning Greater Glider management

15. In January 2018, I obtained a document titled "VicForests Interim Greater Glider Conservation Strategy" dated 30 November 2017. The document includes that:

*"In response to the listing of the Greater Glider, the Department of Environment Land Water and Planning is developing an Action Statement. This is anticipated to be completed in the next 12 – 18 months. When this action statement is enacted, VicForests will review its provisions and the following interim prescription. VicForests is represented in the process to develop the action statement.*

*VicForests has considered the need for additional Greater Glider protection measures to be taken on an interim basis while this Action statement is developed. VicForests has no legal obligation to undertake additional protection at this time, but seeks to demonstrate responsible stewardship and fidelity to the precautionary principle. VicForests' proposed interim measures are outlined below." (p5) ...*

*"...Coupes that contain areas identified in the Greater Glider High Quality Habitat Class 1 layer will be assessed to determine if High Quality Greater Glider Habitat occurs within the coupe. This assessment is to be made by visual inspection of the inside-coupe area within 75 m of the coupe boundary. If five trees meeting the criteria for living, large, hollow-bearing trees can be seen within approximately 50 m of the viewer in any direction, it is likely that the density of living, large, hollow-bearing trees meets the threshold for High Quality Greater Glider Habitat. In this case, living, large, hollow-bearing trees additional to Code requirements may be retained for the purpose of providing additional denning sites for Greater Glider.*

*In High Quality Greater Glider Habitat, VicForests will endeavour to retain within coupes additional live, large, hollow-bearing trees that occur within 75 m of retained habitat..." (p6)*

Now produced and shown to me and marked **DJ-33** is a true copy of the document.

16. On or about 22 April 2018, I accessed the VicForests website and downloaded a document titled "VicForests Biodiversity Survey Instruction" dated 24 June 2016. The document sets out 3 criteria that correlate to a targeted survey for specified threatened species in specified geographic regions. The document does not require surveys for Greater Gliders in the Central Highlands RFA Area. The document includes the following,

#### **4.4. Targeted Species Survey**

*Targeted Species Surveys are to be undertaken in accordance with the VicForests Procedure - Targeted Species Surveys. This additional survey is only undertaken on a selection of coupes that were assessed as having a higher overall risk regarding threatened species identification and management.*

*In this context, high risk primarily refers to an increased likelihood of a threatened species being present within an area affected by the proposed timber harvesting that if detected, may require changes to the way in which the proposed operation is planned and implemented.*

...

*Table 2. indicates the current list of threatened species that VicForests aim to identify during a Targeted Species Survey, dependant on the geographic region in which the coupe is located and subject to a specific set of 'detection-likelihood' Criterion.*

**Table 2. Target species and applicable criterion for Targeted Species Survey**

Common Name / Scientific Name	Survey Criterion
Giant Burrowing Frog, <i>Heleioporus australiacus</i> Greater Glider, <i>Petaurus volans</i> Large Brown Tree Frog, <i>Litoria littlejohni</i> Long-footed Potoroo, <i>Potorous longipes</i> * Mallacoota Burrowing Crayfish, <i>Engaeus Mallacoota</i> Masked Owl, <i>Tyto tenebricosa</i> Orbost Spiny Crayfish, <i>Euastacus diversus</i> Powerful Owl, <i>Ninox strenua</i> Sooty Owl, <i>Tyto novaehollandiae</i> Southern Barred Frog, <i>Mixophyes balbus</i> Spot-tailed Quoll, <i>Dasyurus maculatus</i> * Spotted Tree Frog, <i>Litoria spenceri</i> Yellow-bellied Glider, <i>Petaurus australis</i>	Criterion 1
Leadbeater's Possum, <i>Gymnobelideus leadbeateri</i> *	Criterion 2
Koala, <i>Phascolarctos cinereus</i>	Criterion 3

...

**Criterion 1**

*Coupes located in East Gippsland, Tambo or North East FMAs that contain >1 hectare of Modelled Old Growth Forest mapped within the Gross Coupe Boundary (according to Government Spatial Dataset MOG2009).*

**Criterion 2**

*Coupes located within the Central Highlands that are dominated by Ash forest and are:*

*a) situated within 200m of a known Leadbeater's Possum colony site;*

**AND/OR**

*b) situated within 1km of a known hotspot of Leadbeater's Possum colonies (a hotspot includes greater than 5 verified colonies);*

**AND/OR**

*c) Contain Zone 1A or Zone 1B Leadbeater's Possum habitat and at least 3 of the following attributes:*

- Modelled Old Growth Forest is mapped within the gross coupe boundary (according to Government Spatial Dataset MOG2009)*
- Cool-temperate Rainforest (EVC 31) is field verified as present within the Gross Coupe Boundary*
- Pre-1900 origin Mountain Ash, Alpine Ash or Shining Gum trees are field verified as present within the Gross Coupe Boundary*

- *Montane Riparian Thicket (EVC 41) is field verified as present within the gross coupe boundary*
- *An ANU Leadbeater's Possum Monitoring site (stag watch site) is present within the Gross Coupe Boundary*

**Criterion 3**

*Coupes located in a known high density koala population area and a coupe transect field survey confirms the presence of one or more of the following Koala forage tree species in the coupe*

- *Manna Gum, Eucalyptus viminalis*
- *Swamp Gum, Eucalyptus ovata*
- *River Red Gum, Eucalyptus camaldulensis*
- *Southern-Blue Gum, Eucalyptus globulus" (p6-8)*

Now produced and shown to me and marked **DJ-34** is a true copy of this document.

**The Threatened Coupes**

17. I refer to paragraphs 13 to 15 of my First Affidavit (Scheduled Logging Operations – Timber Release Plan) and the documents comprising the Timber Release Plan, annexed at DJ-9 to DJ-11 to that affidavit. Seven of the coupes included on the Timber Release Plan which are located within the CH RFA area are as follows:

- (a) Coupe 317-508-0010 (Swing High) (the **Matlock coupe 9.35**) which is located on the Matlock plateau. The Timber Release Plan describes the forest stand within the Matlock coupe 9.35 as "Mixed Species" and states that 9 hectares nett area is planned for logging by the clearfell method within the coupe.
- (b) Coupe 312-002-0006 (Farm Spur Gum) (the **Torbreck River coupe 10.20A**) which is located near the Torbreck River. The Timber Release Plan describes the forest stand within the Torbreck River coupe 10.20A as "Mixed Species" and states that 20 hectares nett area is planned for logging by the seed tree method within the coupe.
- (c) Coupe 462-512-0002 (Backdoor) (the **South Noojee coupe 10.35**) which is located in the southern area of the Noojee forest. The Timber Release Plan describes the forest stand within the South Noojee coupe 10.35 as "Ash" and states that 36 hectares nett area is planned for logging by the clearfell method within the coupe.

- (d) Coupe 290-527-0004 (Camberwell Junction) (the **Big River coupe 10.37**) which is located near the Big River. The Timber Release Plan describes the forest stand within the Big River coupe 10.37 as “Mixed Species” and states that 27 hectares nett area is planned for logging by the clearfell method within the coupe.
- (e) Coupe 290-525-0002 (Vice Captain) (the **Big River coupe 10.38**) which is also located near the Big River. The Timber Release Plan describes the forest stand within the Big River coupe 10.38 as “Mixed Species” and states that 20 hectares nett area is planned for logging by the clearfell method within the coupe.
- (f) Coupe 288-505-0001 (Dry Spell) (the **Snobs Creek coupe 10.39**) which is located near Snobs Creek. The Timber Release Plan describes the forest stand within the Snobs Creek coupe 10.39 as “Ash” and states that 12 hectares nett area is planned for logging by the clearfell method within the coupe.
- (g) Coupe 288-506-0001 (Dry Cleaner) (the **Snobs Creek coupe 10.40**) which is also located near Snobs Creek. The Timber Release Plan describes the forest stand within the Snobs Creek coupe 10.38 as “Ash” and states that 17 hectares nett area is planned for logging as a road alignment improvement within the coupe (Snobs Creek coupes 10.39 and 10.40 are, together, the **Snobs Creek Coupes**).
- (together, the Threatened Coupes).

18. The Timber Release Plan includes in excess of 2500 coupes, more than 800 of which are located within the CH RFA area. Pages 8-9, 12-13 and 20 of the Timber Release Plan schedule, annexed at **DJ-9** to my First Affidavit, list the Threatened Coupes as follows,

TRP Period	Region	Forest Management Area	District	Coupe Number	TRP Status	Nominated Period of Harvest	TRP Approval Date	Silviculture	Gross Area (ha)	Nett Area (ha)	Driveway Area (ha)	Driveway length (m)	Road Length	Forest Stand Description
2013-2018	North East	Central	Marysville	317-508-0010	Current	2016 - 2018	01/10/2013	Clearfelling	23.40	9.00	0	0	0	Mixed Species
2013-2018	North East	Central	Marysville	312-002-0006	Current	2016-2018	01/10/2013	Seed Tree (Includes retained overwood)	25.50	20.00	0	0	0	Mixed Species
2013-2018	West Gippsland	Central Gippsland	Noojee	462-512-0002	Current	2016-2018	05/10/2016	Clearfelling	55.00	36.00	0	0	0	Ash

2013-2018	North East	Central	Alexandra	290-527-0004	Current	2016-2018	01/10/2013	Clearfelling	33.90	27.00	0	00	Mixed Species
2013-2018	North East	Central	Alexandra	290-525-0002	Current	2016-2018	01/10/2013	Clearfelling	42.80	20.00	0	00	Mixed Species
2013-2018	North East	Central	Alexandra	288-505-0001	Current	2016-2018	01/10/2013	Clearfelling	37.30	12.00	0	0	Ash
2013-2018	North East	Central	Alexandra	288-506-0001	Current	2016-2018	01/10/2013	Road alignment - Improvement	73.90	17.00	0	15.5	Mixed Species

19. The Timber Release Plan map titled "Powelltown (East)", on p170 of annexure DJ-10 to my First Affidavit depicts the boundary of the Matlock coupe 9.35 in the north-eastern part of the map and the Torbreck coupe 10.20A in the northern part of the map. The Timber Release Plan map titled "Noojee" depicts the boundary of the South Noojee coupe 10.35 in the central part of the map. The Timber Release Plan map titled "Marysville" depicts the boundary of the Big River coupes 10.37 and 10.38 in the northern part of the map. The Timber Release Plan map titled "Alexandra" depicts the boundary of the Snobs Creek coupes in the central part of the map. I caused close-up extracts of the relevant parts of the Powelltown (East), Noojee, Marysville and Alexandra Timber Release Plan maps annexed at DJ-10 to my First Affidavit depicting the Threatened Coupes to be copied into a document.

Now produced and shown to me and marked **DJ-35** is a true copy of the close-up extracts of the Powelltown (East), Noojee, Marysville and Alexandra Timber Release Plan maps.

20. I refer to paragraph 25 of my First Affidavit introducing Mr McKenzie, who regularly conducts fauna surveys in the Central Highlands region forests. Mr McKenzie has informed me and I believe that:

**Matlock survey and correspondence**

(a) Overnight on or about 17 and 18 February 2018, Mr McKenzie conducted a spotlight survey within the Matlock Coupe 9.35, during which he saw 4 Greater Gliders and one Leadbeater's Possum within the coupe, and one Greater Glider adjacent to the coupe within the boundary of a neighbouring scheduled coupe. Mr McKenzie



recorded video footage of each Greater Glider he saw. On each occasion this footage also includes, within a single continuous recording, video footage of a GPS device showing coordinates that identify his location. Mr McKenzie also marked a GPS waypoint at each location of a Greater Glider that he saw.

- (b) On 18 February 2018, Mr McKenzie prepared a report documenting his survey findings at the Matlock coupe 9.35. The report includes a map and list of latitude/longitude locations of the Greater Gliders and Leadbeater's Possum he detected. Mr McKenzie emailed the report, together with both GPS waypoint location records (digital records in 'gpx' file format) and video footage of the Greater Gliders detected during his survey (the **Matlock Report**), to DELWP. Mr McKenzie forwarded me a copy of this email, which among other things includes the following,

*"Dear Department of Environment, Land, Water and Planning staff and VicForests,  
Attached is a report detailing the presence of vulnerable Greater Gliders and a critically endangered Leadbeater's Possum individual within coupe 317-508-0010.*

*In recent months we've lost a considerable number of Greater Gliders to VicForests clearfell logging operations, to protect the individuals present within coupe 317-508-0010, DELWP must enforce the precautionary principle and stop VicForests.*

*We look forward to hearing from DELWP that VicForests' clearfell logging operations within coupes 317-508-0010, 317-508-0009 and 317-508-0011 will be ceased and these coupes will be removed from the current Timber Release Plan, due to the significant biodiversity values within the area"*

The Matlock Report included the following,

*"...Sections of coupe 317-508-0010 are home to a large number of older hollow bearing trees that are currently inhabited by the vulnerable Greater Glider. Over the past six to twelve months, DELWP have been 'still determining our interim protection measures for Greater Gliders'. While we wait for some kind of protection from logging operations for the species, more and more individuals are killed in VicForests clearfelling operations. This species is incredibly difficult to survey for and our nocturnal survey conducted throughout the coupe is certainly not an accurate representation of both the number and extend of Greater Gliders throughout coupe 317-508-0010. If DELWP don't intervene and stop VicForests clearfell logging operations, the population of vulnerable Greater Gliders detected within this coupe, will be destroyed.*

*3. We conclusively recommend that DELWP enforces the Precautionary Principle from the Code of Practice for Timber Production 2014” (p9)*

Now produced and shown to me and marked **DJ-36** is a true copy of the email with the attached report.

Now produced and shown to me and marked **DJ-37** is a true copy of the video footage and gpx files conveyed by the email on a USB flashdrive.

- (c) Mr McKenzie received two email responses from DELWP to the Matlock Report which he forwarded to me. The first email from DELWP was received on 18 February 2018 and includes the following statement,

*“Thank you for your report of Greater Gliders, a Leadbeater's Possum, Yellow-bellied Glider and Mountain Brushtail Possum sightings within Coupe 317-508-0010, 'Swing High', Warburton-Woods Point Road.  
The case reference number is 2018-0012.  
The department is assessing the information in your report and you will be advised of the outcome.  
Your report has been forwarded to VicForests.”*

The second email from DELWP was received on 3 March 2018 and includes the following statement,

*“Please be advised that LBP report 2018-0012 (Big River SF) you submitted is now verified.  
As a result, Leadbeater's possum colony was formed and a 200 m buffer exclusion zone was established surrounding the sightings...”*

Now produced and shown to me and marked **DJ-38** is a true copy of these emails.

- (d) Mr McKenzie did not receive any communication from VicForests relating to the Matlock Report.
- (e) On 16-17 March 2018, Mr McKenzie returned to the Matlock Coupe 9.35 and saw that logging operations had commenced in the coupe. He saw a clear-felled area that he estimated to be about 1.5 hectares in size within the coupe, and heavy logging machinery present within the coupe. Mr McKenzie took drone footage of the coupe on this occasion, which he sent to me.



Now produced and shown to me and marked **DJ-39** is a true copy of this drone footage on a USB flash drive.

### **Torbreck river survey and correspondence**

- (f) Overnight on or about 2 and 3 June 2017, and again on 6 and 7 November 2017, Mr McKenzie conducted spotlight surveys within the Torbreck River coupe 10.20A. During the first survey Mr McKenzie saw 8 Greater Gliders within or bordering the coupe. During the second survey Mr McKenzie saw 14 Greater Gliders within or bordering the coupe, including more than 10 Greater Gliders within a kilometre. During both surveys Mr McKenzie recorded video footage of each Greater Glider he saw, except for one during the first survey. On each occasion this footage also includes, within a single continuous recording, video footage of a GPS device showing coordinates that identify his location. Mr McKenzie also marked a GPS waypoint at each location of a Greater Glider that he saw.
- (g) On 7 November 2017, Mr McKenzie prepared a report documenting his survey findings. The report includes a map and list of latitude/longitude locations of the Greater Gliders he detected. Mr McKenzie emailed the report, together with both GPS waypoint location records (digital records in 'gpx' file format) and video footage of the Greater Gliders detected during his survey (together, the **Torbreck Report**), to DELWP and VicForests. Mr McKenzie forwarded me a copy of this email, which included the following,

*"Dear Department of Environment, Land, Water and Planning (the Department) Staff and Vicforests...*

*Please find attached a report (171107-Greater Glider Detections-Torbreck River South Branch-312-002-0006-WOTCH), compressed (zipped) folders (17.06.02-03 - Torbreck River South Branch Survey 1, 17.11.06-07 - Torbreck River South Branch Survey 2) and GPX files (Figure 4a - 17.06.02-03 - Torbreck River South Branch Survey 1, Figure 4b - 17.11.06-07 - Torbreck River South Branch Survey 2) of Greater Gliders recorded within and adjacent coupe 312-002-0006 in the Rubicon State Forest.*

*Recent road clearing and widening works of North Torbreck Road have been*



*undertaken along the eastern boundary of coupe 312-002-0006. Given the presence of the Threatened Greater Glider, it would be greatly appreciated if DELWP would communicate, as soon as possible, that VicForests have been informed of the above report and no timber harvesting or roading operations are due to re-commence within coupe 312-002-0006 in the coming days.*

The report included the following,

*"... Given the presence of Greater Gliders within and adjacent coupe 312-002-0006 as detailed in this report, the Department of Environment, Land, Water and Planning must restrain and VicForests must refrain from logging this coupe including to comply with the precautionary principle as required by the Code of Practice for Timber Production 2014. ...Further surveys within coupe 312-002-0006 are necessary to ensure all Threatened Greater Gliders not detected within the above survey, are located and protected." (p10)*

Now produced and shown to me and marked **DJ-40** is a true copy of the email with the attached report.

Now produced and shown to me and marked **DJ-41** is a true copy of the video footage and gpx files conveyed by the email on a USB flashdrive.

- (h) Mr McKenzie did not receive any response from VicForests to the Torbreck Report. Mr McKenzie received one email response from DELWP to the Torbreck Report, dated 8 November 2017, which he forwarded to me and which includes the following,

*"Thank you for your report of Greater Gliders at coupe 312-002-0006 on Farm Spur 1 Track, Rubicon State Forest. The case reference number is 2017-0070. Your report has been forwarded to VicForests. The department is assessing the information in your report and you will be advised of the outcome when complete."*

Now produced and shown to me and marked **DJ-42** is a true copy of this email.

- (i) On 20 April 2018, Mr McKenzie returned to the Torbreck Coupe 10.20A and saw that logging operations had commenced in the coupe. He saw a clear-felled area that he estimated to be at least half a hectare in size within the coupe, and a bulldozer



present within the coupe. Mr McKenzie took photographs of the coupe on this occasion, which he sent to me.

Now produced and shown to me and marked DJ-43 is a true copy of these photographs.

### **South Noojee survey and correspondence**

- (j) Overnight on or about 29-30 October, 11 November and 30 November-1 December 2017, 4-5 January 2018, 14 February 2018 and 31 March 2018, Mr McKenzie conducted spotlight surveys within the South Noojee Coupe 10.35. The results were as follows:
- i. on 29-30 October 2017, Mr McKenzie saw 1 Greater Glider within the coupe;
  - ii. on 11 November 2017, Mr McKenzie saw 2 Greater Gliders within the coupe;
  - iii. on 30 November-1 December 2017, Mr McKenzie saw 3 Greater Gliders within the coupe;
  - iv. on 4-5 January 2018, Mr McKenzie saw 2 Greater Gliders within the coupe;
  - v. on 14 February 2018, Mr McKenzie saw 2 Greater Gliders within the coupe;
  - vi. on 31 March 2018, Mr McKenzie saw 5 Greater Gliders within the coupe.
- (k) Mr McKenzie marked a GPS waypoint at each location of a Greater Glider that he saw during each survey. On 29-30 October 2017, 30 November-1 December 2017, 4-5 January 2018 and 31 March 2018, Mr McKenzie recorded video footage and photographs of each Greater Glider he saw. On each occasion this footage also includes, within a single continuous recording, video footage of a GPS device showing coordinates that identify his location. Mr McKenzie provided me with some of this video footage and some of these photographs.



Now produced and shown to me and marked **DJ-44** is a true copy of the video footage and photographs on a USB flashdrive.

- (l) On 20 March 2018, Mr McKenzie prepared a report documenting his survey findings prior to that date. The report includes a map and list of latitude/longitude locations of the Greater Gliders he detected. Mr McKenzie emailed the report together with GPS waypoint location records (digital records in 'gpx' file format) of the Greater Gliders detected during his surveys prior to 20 March 2018 (together, the **South Noojee Report**), to DELWP and VicForests. Mr McKenzie forwarded me this email, which included the following,

*"Dear Department of Environment, Land, Water and Planning staff and VicForests,  
Please find attached a report detailing the presence of threatened fauna and flora, including Greater Gliders, Yellow-bellied Gliders and Tree Geebungs, recorded within coupe 462-512-0002 along McCarthy Spur Road, Noojee.  
Due to the presence of the vulnerable Greater Gliders, Yellow-bellied Gliders and Tree Geebungs found throughout coupe 462-512-0002, we highly recommend DELWP inform VicForests not to go ahead with the clearfell logging of this coupe.  
All evidence from the surveys conducted, including photographic and video evidence, will be submitted to DELWP on request, due to current uploading issues prohibiting the uploading of the data within this email.  
We look forward to hearing the actions to which DELWP intend on taking, following the submission of this report of threatened species found in Victoria's State Forests."*

The South Noojee Report, among other things, included the following,

*"In recent months WOTCH has submitted a number of reports detailing the presence of Greater Gliders in clearfell logging coupes as well as the destruction of protected Tree Geebungs throughout the northern section of Loch Valley area. Logging coupes where Greater Gliders have been recorded and reported have since been logged and there's been no consideration to the reports submitted..."*

Now produced and shown to me and marked **DJ-45** is a true copy of the email with the attached report.

- (m) Mr McKenzie did not receive any response from VicForests to the South Noojee Report. Mr McKenzie received one email response from DELWP to the South

Noojee Report, dated 21 March 2018, which he forwarded to me and which includes the following,

*"Thank you for your report of Greater Gliders, Yellow-bellied Gliders and Tree Geebungs detected within coupe 462-512-0002, McCarthy Spur Road, Noojee State Forest.*

*The case reference number is 2018-0021.*

*The department is assessing the information in your report and you will be advised of the outcome. We will be in touch if we require any of the additional supporting information that you have gathered for our assessment of your report. Your report has been forwarded to VicForests."*

Now produced and shown to me and marked **DJ-46** is a true copy of this email.

### **Big River 10.37 survey and correspondence**

- (n) Overnight on or about 17 and 18 December 2017, and again on 24 and 25 December 2017, Mr McKenzie conducted spotlight surveys within the **Big River** coupe 10.37. During the first survey Mr McKenzie saw 2 Greater Gliders within or bordering the coupe. During the second survey Mr McKenzie saw 1 Greater Glider within the coupe. During both surveys Mr McKenzie recorded video footage of each Greater Glider he saw. On each occasion this footage also includes, within a single continuous recording, video footage of a GPS device showing coordinates that identify his location. Mr McKenzie also marked a GPS waypoint at each location of a Greater Glider that he saw.
- (o) On 7 January 2018, Mr McKenzie prepared a report documenting his survey findings. The report includes a map and list of latitude/longitude locations of the Greater Gliders he detected. Mr McKenzie emailed the report to DELWP, together with GPS waypoint location records (digital records in 'gpx' file format) and video recordings of the Greater Gliders detected during his survey (together, the **Big River 10.37 Report**). Mr McKenzie forwarded this email to me, which included the following,

*“Attached is a report of three Greater Gliders recorded within and adjacent coupe 290-527-0004. Please ensure the required protective buffers are adequately implemented by VicForests for this vulnerable arboreal mammal.*

*We look forward to hearing from you about what type of protective buffers will be implemented regarding this report.”*

The report included the following,

*“If contractors are go ahead with the logging of coupe 290-527-0004 the following recommendations should be greatly considered to conserve the vulnerable Greater Gliders and any other threatened species within this coupe:*

*Further surveys within the coupe are necessary to ensure all Greater Gliders and other threatened species are identified and adequately protected.*

*Complying with the Precautionary Principle under the ‘Code of Practice for Timber Production 2014’, protective buffer zones of 300m around each individual vulnerable Greater Glider recorded within the coupe, should be implemented.*

*All large and small hollow bearing trees with capabilities of providing nesting sites for Greater Gliders or other threatened arboreal fauna within the coupe, should also be given a protective buffer of at least 100 meters to ensure they’re safe from timber harvesting operations.”*

Now produced and shown to me and marked **DJ-47** is a true copy of the email with the attached report.

Now produced and shown to me and marked **DJ-48** is a true copy of the gpx files and video footage conveyed by the email on a USB flashdrive.

- (p) Mr McKenzie received one email response from DELWP to the Big River 10.37 Report, dated 8 January 2018, which he forwarded to me and which includes the following,

*“Thank you for your report of Greater Gliders at coupe 290-527-0004, Big River SF.*

*The case reference number is 2018-0001*

*The department is assessing the information in your report and you will be advised of the outcome.*

*Your report has been forwarded to VicForests.”*

Now produced and shown to me and marked **DJ-49** is a true copy of this email.

- (q) Mr McKenzie did not receive any communication from VicForests relating to the Big River 10.37 Report.

### **Big River 10.38 survey and correspondence**

- (r) Overnight on or about 24 and 25 December 2017, and again on 30 and 31 December 2017, Mr McKenzie conducted spotlight surveys within the **Big River coupe 10.38**. During the first survey Mr McKenzie saw 1 Greater Gliders within or bordering the coupe. During the second survey Mr McKenzie saw 3 Greater Gliders within the coupe. During both surveys Mr McKenzie recorded video footage of each Greater Glider he saw. On each occasion this footage also includes, within a single continuous recording, video footage of a GPS device showing coordinates that identify his location. Mr McKenzie also marked a GPS waypoint at each location of a Greater Glider that he saw.
- (s) On 7 January 2018, Mr McKenzie prepared a report documenting his survey findings. The report includes a map and list of latitude/longitude locations of the Greater Gliders he detected. Mr McKenzie emailed the report to DELWP, together with GPS waypoint location records (digital records in 'gpx' file format) and video recordings of the Greater Gliders detected during his survey (together, the **Big River 10.38 Report**). Mr McKenzie forwarded this email to me, which included the following,

*"Attached is a report, GPX file and video footage of four Greater Gliders recorded within and coupe 290-525-0002 along Eildon-Warburton Road in the Big River State Forest.*

*Please ensure the required protective measures are adequately implemented by VicForests for the protection of each vulnerable Greater Glider recorded."*

Now produced and shown to me and marked **DJ-50** is a true copy of the email with the attached report.

Now produced and shown to me and marked **DJ-51** is a true copy of the gpx files and video footage conveyed by the email on a USB flashdrive.

- (t) Mr McKenzie received one email response from DELWP to the Big River 10.37 Report, dated 8 January 2018, which he forwarded to me and which includes the following,

*"Thank you for your report of Greater Gliders at coupe 290-525-0002, Big River SF.*

*The case reference number is 2018-0002*

*The department is assessing the information in your report and you will be advised of the outcome.*

*Your report has been forwarded to VicForests."*

Now produced and shown to me and marked **DJ-52** is a true copy of this email.

- (u) Mr McKenzie did not receive any communication from VicForests relating to the Big River 10.37 Report.
- (v) On 20 April 2018, Mr McKenzie returned to the Big River coupe 10.38 and saw that logging operations had commenced in the coupe. He saw a clear-felled area that he estimated to be about 1.5 hectares in size within the coupe, and heavy logging machinery present within the coupe. Mr McKenzie took photographs of the coupe on this occasion, which he sent to me.

Now produced and shown to me and marked **DJ-53** is a true copy of these photographs.

### **Snobs Creek survey and correspondence**

- (w) Overnight on or about 1 and 2 February 2018, and again on 3 and 4 February 2018, Mr McKenzie conducted spotlight surveys within the Snobs Creek coupes. During the first survey Mr McKenzie saw 21 Greater Gliders within or bordering the Snobs Creek coupes, including more than 10 Greater Gliders within a kilometre. During the second survey Mr McKenzie saw 5 Greater Gliders within or bordering the Snobs Creek coupes. During both surveys Mr McKenzie recorded video footage and photographs of each Greater Glider he saw, except for one. On each occasion this footage also includes, within a single continuous recording, video footage of a GPS

device showing coordinates that identify his location. Mr McKenzie also marked a GPS waypoint at each location of a Greater Glider that he saw. Mr McKenzie provided me with some of this video footage and some of the photographs.

Now produced and shown to me and marked **DJ-54** is a true copy of the video footage and photographs on a USB flashdrive.

- (x) On 9 February 2018, Mr McKenzie prepared a report documenting his survey findings at the Snobs Creek coupes. The report includes a map and list of latitude/longitude locations of the Greater Gliders he detected. Mr McKenzie emailed the report to DELWP, together with photographs of the Greater Gliders detected during his survey in digital folders corresponding to the waypoint ID numbers listed in the results table on page 2 of his report (together, the **Snobs Creek Report**). Mr McKenzie forwarded me a copy of this email, which included the following,

*"Please find attached a report and supporting evidence of a large number of vulnerable Greater Gliders recorded within and adjacent coupes 288-505-0001, 288-506-0001, 288-506-0003 and 288-506-0004 along Dry Creek Hill Road, Snobs Creek.*

*Within a highly disturbed area of forest, this significant patch of Greater Glider habitat and old live hollow bearing trees must be protected from VicForests clearfell logging operations...*

*All Greater Gliders recorded, except the individual located at waypoint DCC03, were not only photographed, but also filmed with GPS coordinates within the clip. This evidence is not attached within the submission of this report due to uploading issues, however if DELWP require this evidence it will be provided on request.*

*We look forward to hearing your response regarding the actions to be taken by DELWP following the submission of the attached report.*

The report included the following,

*"...Surveys conducted for the Greater Gliders inhabiting the Dry Creek Hill area are certainly an inadequate representation of the number of individuals that may be present throughout these scheduled and proposed logging coupes. This is because: most of the area within the logging coupes haven't yet been surveyed, and within the surveys already conducted, it's highly likely many Greater Gliders were not observed and recorded.*

*To our understanding this significant patch of forest hasn't in the past been clear fell logged. In a highly disturbed landscape, patches like this one are extremely important for the long-term survival of the Greater Gliders that inhabit the area, as well as other threatened hollow dependent species..." (p8)*



Now produced and shown to me and marked **DJ-55** is a true copy of the email and the report it conveyed.

Now produced and shown to me and marked **DJ-56** is a true copy of the photographs in digital folders conveyed by the email on a USB flashdrive.

- (y) Mr McKenzie received one email response from DELWP to the Snobs Creek Report, dated 9 February 2018, which he forwarded to me. The email includes the following,

*"Thank you for your report of Greater Gliders within Coupes 288-505-0001 'Dry Spell', 288-506-0001 'Dry Creek Hill RDF', 288-506-0003 and 288-506-0004 along Dry Creek Hill Road, Snobs Creek.  
The case reference number is 2018-0010.  
The department is assessing the information in your report and you will be advised of the outcome. We do not require any additional information at this stage.  
Your report has been forwarded to VicForests."*

Now produced and shown to me and marked **DJ-57** is a true copy of this email.

- (z) Mr McKenzie did not receive any response from VicForests to the Snobs Creek Report.

### **Hollow-bearing trees**

- (aa) During each of the surveys described at paragraphs 21(a)-(z), Mr McKenzie observed large, older hollow-bearing trees and mature forest within the parts of each coupe which he surveyed.

### **Correspondence with the Respondent regarding amendment of Statement of Claim and seeking undertaking**

21. On 28 February 2018, I sent a letter by email to the Respondent's solicitors foreshadowing that the Applicant intended to amend its statement of claim and informing it of the substance of the amendment. The letter was dated 28 February 2017 rather than 28 February 2018 in error.

Now produced and shown to me and marked **DJ-58** is a true copy of this letter.

22. On 15 March 2018, I sent a letter by email to the Respondent's solicitors which, among other things, confirmed that the Applicant would soon be filing an amended statement of claim.

Now produced and shown to me and marked **DJ-59** is a true copy of this letter.

23. At about 2pm on 20 April 2018, I sent a letter by email to the Respondent's solicitors, which, among other things, sought an undertaking from the Respondent relating to 3 coupes the subject of these proceedings, notification of other coupes subject of the proceedings in which the Respondent had commenced or intends to commence timber harvesting operations prior to 11 May 2018, and seeking relevant Forest Coupe Plans. The letter requested a response by 6pm that day.

Now produced and shown to me and marked **DJ-60** is a true copy of the letter.

24. On 20 April 2018, at about 6pm, I received a letter from the solicitors for the Respondent. The letter, among other things, included the following,

*"The request for an undertaking from VicForests is refused.*

*Subject to the caveat below, we are instructed that VicForests is currently carrying out, or intends to commence carrying out prior to 11 May 2018, timber harvesting operations (as that term is defined in section 3 of the Sustainable Forests (Timber) Act 2004 (Vic)) in the following coupes listed in paragraph 10 of the Amended Statement of Claim filed by your client on 29 March 2018:*

- (a) 462-512-0002 (Backdoor);*
- (b) 290-527-0004 (Camberwell Junction);*
- (c) 288-505-0001 (Dry Spell); and*
- (d) 288-506-0001 (Dry Cleaner).*

*We have been unable to confirm with operational staff that the above instructions are correct (due to staff being located in remote areas), but we will do so and confirm in writing to you by 5:00 pm on Monday 23 April 2018, at which time we will also respond to your request for copies of Forest Coupe Plans."*

Now produced and shown to me and marked **DJ-61** is a true copy of that letter.

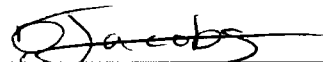
#### **Correspondence with Dr van der Ree**


25. On 23 April 2018, I prepared an index to the video and photographs files contained on Annexures DJ-37, DJ-41, DJ-44, DJ-48, DJ-51, DJ-54 to this my Affidavit, which also lists the dates of the surveys during which each file was recorded as set out at paragraph

20 above. I provided this index together with copies of the video and photographs files contained on Annexures DJ-37, DJ-41, DJ-44, DJ-48, DJ-51, DJ-54 to this my Affidavit to Dr Rodney van der Ree, under cover of a letter requesting an expert report to identify the species of fauna depicted in each video. Now produced and shown to me and marked DJ-62 is a true copy of this letter and the index.

Affirmed by the deponent  
at Carlton  
in Victoria  
on 23 April 2018  
Before me:

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\_\_\_\_\_  
Signature of deponent

  
\_\_\_\_\_  
Signature of witness

**BRONYA LIPSKI**  
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An Australian Legal Practitioner  
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Legal Profession Uniform Law (Victoria)

