

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/04/2018 3:48:42 PM AEST 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:	Outline of Submissions
File Number:	VID1228/2017
File Title:	FRIENDS OF LEADBEATER'S POSSUM INC v VICFORESTS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 3/04/2018 3:48:47 PM AEST

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.



**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN REGISTRY**

VID 1228/2017

BETWEEN:

FRIENDS OF LEADBEATER'S POSSUM INC

Applicant

and

VICFORESTS

Respondent

COMMONWEALTH OF AUSTRALIA

First Intervener

STATE OF VICTORIA

Second Intervener

OUTLINE OF SUBMISSIONS OF THE SECOND INTERVENER

1. The Court delivered reasons in this matter on 2 March 2018 and ordered that the parties and the interveners confer to formulate an answer to the separate question and other consequential orders. The parties were unable to reach agreement on all matters. The purpose of these submissions is to outline the position of the State of Victoria in respect of the outstanding issues.

The Separate Question

2. The parties and interveners were unable to agree an answer to the separate question. Each of the State of Victoria, VicForests and the Commonwealth advanced the following answer:

The exemptions in s 38(1) of the *Environment Protection Biodiversity Conservation Act 1999* (Cth) and s 6(4) of the *Regional Forest Agreements Act 2002* (Cth) are not rendered inapplicable to logging of the coupes (as described in the stated question) by the failure to carry out reviews of the performance of the Central Highlands Regional Forest Agreement within the relevant time, as contemplated by cl 36 of the Central Highlands RFA.

3. The Applicant communicated with the parties late on 16 March 2018, saying that it did not agree with the above formulation. It has instead proposed the following answer:

Failure to carry out reviews of the performance of the Central Highlands Regional Forest Agreement required by cl 36 of the Central Highlands RFA within the periods stipulated by that clause does not operate to deny to the logging of the Logged Coupes and the proposed logging of the Scheduled Coupes (as described in the stated question) exemption from the application of Part 3 of the *Environmental Protection Biodiversity Conservation Act 1999* (Cth) (the EPBC Act), pursuant to s 38(1) of the EPBC Act.

4. It is not clear whether any substantive difference emerges from the Applicant's formulation of the answer, when compared to that agreed to by VicForests, the Commonwealth and the State.
5. It appears that the parties have been unable to reach agreement because the terms of the other orders remain in dispute, in particular whether it is appropriate to make an order as to costs, and whether it is appropriate to make an order dismissing the proceeding.
6. In the circumstances, the State of Victoria does not consider that there is a material difference between the two proposed answers to the question.

Other Orders

7. VicForests, the Commonwealth and the State also agreed that the proceeding should be dismissed. There is no other order that is appropriate on the application and pleadings presently before the Court, in light of the judgment given by Her Honour. The State relies, in particular, on [6], [8]-[9] and [280] of the Court's reasons.
8. The State does not seek to be heard with respect to any question of costs, unless any party seeks costs from the State.

Dated: 3 April 2018

C M CALEO
Owen Dixon Chambers West

E A BENNETT
Owen Dixon Chambers West