

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/03/2019 6:17:50 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: Reply - Form 34 - Rule 16.33  
File Number: VID1228/2017  
File Title: FRIENDS OF LEADBEATER'S POSSUM INC v VICFORESTS  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 12/03/2019 6:17:59 PM 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.



**Amended Reply to the Further Amended Defence to Second Further Amended Statement of Claim**

No. VID 1228 of 2018

Federal Court of Australia  
District Registry: Victoria  
Division: ACLHR

**FRIENDS OF LEADBEATER'S POSSUM INC**

Applicant

**VICFORESTS**

Respondent

In Reply to the Further Amended Defence to the Second Further Amended Statement of Claim filed on 22 February~~January 2019~~~~October 13 September 2018~~ (the **Defence**), the Applicant says (adopting the definitions used in its Second Further Amended Statement of Claim):

1. Save for the admissions therein and save for those facts specifically pleaded in this Amended Reply, the Applicant denies each and every allegation in the Defence, and joins issue with the Respondent in respect of the matters raised in the Defence.

2. As to subparagraph 6.3(~~b~~c), it denies each allegation therein and says that:

2.1 the Timber Release Plan shows that all of the scheduled coupes are proposed for forestry operations by the clear-fell or seed tree retention methods;

2.2 The Respondent has at all times since the development of the 2017 HCV Document and at all times during the development of the Draft Harvesting and Regeneration Systems Document (Systems Document), continued to conduct forestry operations in the Central Highlands RFA Area using the clear fell and seed tree retention methods, including in coupes:

2.2.1 where the Respondent is aware of reported sightings of Greater Glider;

Filed on behalf of (name & role of party)	Friends of Leadbeater's Possum Inc, the Applicant		
Prepared by (name of person/lawyer)	Danya Jacobs		
Law firm (if applicable)	Environmental Justice Australia		
Tel	(03) 8341 3100	Fax	(03) 8341 3111
Email	Danya.Jacobs@envirojustice.org.au		
Address for service (include state and postcode)	Level 3, 60 Leicester Street CARLTON VIC 3053		

2.2.2 where Greater Glider is present;

2.2.3 where Leadbeater's Possum is present.

2.3 Prior to the finalisation and implementation of the Systems Document, that Document does not constitute a shift in the silviculture methods proposed to be used by the Respondent in the scheduled coupes.

2.4 Unless enjoined, the Respondent proposes to conduct forestry operations by the clearfell method or the seed tree retention method in the scheduled coupes.

#### Particulars

(a) The TRP specifies either the clearfell or seed tree retention method as the method of harvesting for each of the scheduled coupes.

(b) The Respondent has not amended the TRP.

(c) It is the Respondent's intention that for the near future, clear felling systems will remain an important part of the Respondent's operations.

(d) The Respondent has not given an undertaking not to conduct any forestry operations in the scheduled coupes by the clearfell or seed tree retention methods prior to the finalisation and implementation of the Systems Document.

(e) The Respondent has not specified a date by which it will implement any method specified in the Systems Document.

(f) The Respondent has not given an undertaking not to conduct any forestry operations in the scheduled coupes by the clearfell or seed tree retention methods after the finalisation and implementation of the Systems Document.

(g) Clear felling and seed tree retention are methods that are specified in System 1 of the Systems Document.

(h) The Systems Document does not impose any mandatory prescriptions for the use of less intensive methods of harvesting than

the current methods of clear felling and seed tree retention harvesting.

Further particulars may be provided prior to, or during, trial.

2.5 Alternatively to paragraph 2.4, to the extent that the Respondent proposes to use the following methods in the scheduled coupes if, as alleged by the Respondent, the regrowth retention harvesting method may be used in whole or in part for a coupe listed on the Timber Release Plan as CFL or STR (which is denied):

2.5.1 System 1 (as defined in the Systems Document);

2.5.2 System 2 (as defined in the Systems Document);

2.5.3 System 3 (as defined in the Systems Document);

2.5.4 System 4 (as defined in the Systems Document); or

2.5.5 System 5 (as defined in the Systems Document);

forestry operations in each, some or all of the scheduled coupes:

2.5.6 are likely to have the impacts pleaded in paragraphs 42 – 71, 73 – 105, 105B, and 105D of the 2FASOC.

#### Particulars

Further particulars may be provided prior to, or during, trial.

2.5.7 have failed, and will fail to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113H of the 2FASOC;

#### Particulars

Further particulars may be provided prior to, or during, trial.

2.6 If, as alleged by the Respondent in 6.3(c)(v), forestry operations in each some or all of the scheduled coupes are conducted in a manner subject to the 2017 HCV Document and/or the Systems Document (which is denied), those forestry operations:

2.6.1 have failed, and will fail, to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113H of the 2FASOC.

Particulars

The Systems Document and the 2017 HCV Document do not require in coupes in the Central Highlands RFA Area:

- (a) detection activities or surveys for the Greater Glider or Greater Glider habitat;
- (b) the application of mandatory prescriptions for Greater Glider:
  - i. at all;
  - ii. that impose the use of less intensive methods of harvesting;
  - iii. upon detection of the presence of Greater Glider or Greater Glider habitat;
  - iv. proportionate to the threat posed by forestry operations to Greater Glider.

Further particulars may be provided prior to, or during, trial.

2.6.2 are likely to have the impacts pleaded in paragraphs 42 – 71, 73 – 105, 105B, and 105D of the 2FASOC.

Particulars

Further particulars may be provided prior to, or during, trial.

3. As to paragraph 9:

9.6 It denies each allegation in paragraph 9.6, and says that if, as alleged by the Respondent, coupe 298-519-0003 (Flicka) was harvested using the regrowth retention and seed tree harvesting silvicultural methods (which is denied), those forestry operations:

9.6.1 have had, are having or are likely to have the impacts pleaded in paragraphs 32, 40 and 105D of the 2FASOC, and

9.6.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the 2FASOC.

9.12 It denies each allegation in paragraph 9.12, and says that if, as alleged by the Respondent coupe 307-505-0011 (Guitar Solo) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations:

9.12.1 have had, are having or are likely to have the impacts pleaded in paragraphs 22, 33, 105B and 105D of the 2FASOC, and

9.12.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the 2FASOC.

9.14 It denies each allegation in paragraph 9.14, and says that if, as alleged by the Respondent, coupe 309-507-0003 (Kenya) was harvested using the regrowth retention ~~and seed tree harvesting~~ silvicultural methods (which is denied), those forestry operations:

9.14.1 have had, are having or are likely to have the impacts pleaded in paragraphs 34, 40 and 105D of the 2FASOC;

9.14.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the 2FASOC.

9.15 It denies each allegation in paragraph 9.15, and says that if, as alleged by the Respondent coupe 309-507-0004 (The Eiger) was harvested using the ~~clearfell and~~ seed tree harvesting silvicultural methods (which is denied), those forestry operations:

9.15.1 have had, are having or are likely to have the impacts pleaded in paragraphs 34, 40 and 105D of the 2FASOC;

9.15.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the 2FASOC.

9.16 It denies each allegation in paragraph 9.16, and says that if, as alleged by the Respondent coupe 317-508-0008 (Professor Xavier) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations have had, are having or are likely to have the impacts pleaded in paragraphs 23, 30, and 105B of the 2FASOC.

9.17 It denies each allegation in paragraph 9.17, and says that if, as alleged by the Respondent, coupe 344-509-0009 (Ginger Cat) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations:

9.17.1 have had, are having or are likely to have the impacts pleaded in paragraphs 24, 30, 35, 40, 105B and 105D of the [2FASOC](#);

9.17.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the [2FASOC](#).

9.18 It denies each allegation in paragraph 9.18, and says that if, as alleged by the Respondent, coupe 348-506-0003 (Blue Vein) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations:

9.18.1 have had, are having or are likely to have the impacts pleaded in paragraphs 24, 30, 35, 40, 105B and 105D of the [2FASOC](#);

9.18.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the [2FASOC](#).

9.19 It denies each allegation in paragraph 9.19, and says that if, as alleged by the Respondent, coupe 345-503-0005 (Bullseye) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations have had, are having or are likely to have the impacts pleaded in paragraphs 25, 30 and 105B of the [2FASOC](#);

9.20 It denies each allegation in paragraph 9.20, and says that if, as alleged by the Respondent, coupe 345-505-0006 (Hairy Hyde) was harvested using the seed tree harvesting silvicultural method (which is denied), those forestry operations:

9.20.1 have had, are having or are likely to have the impacts pleaded in paragraphs 25, 30, 36, 40, 105B and 105D of the [2FASOC](#);

9.20.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the [2FASOC](#).

9.21 It denies each allegation in paragraph 9.21, and says that if, as alleged by the Respondent, coupe 345-506-0004 (Opposite Fitzies) was harvested using the seed tree harvesting silvicultural method (which is denied), those forestry operations have had,

are having or are likely to have the impacts pleaded in paragraphs 25, 30 and 105B of the 2FASOC

9.26 It denies each allegation in paragraph 9.26, and says that if, as alleged by the Respondent, coupe 348-517-0005 (Tarzan) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations:

9.26.1 have had, are having or are likely to have the impacts pleaded in paragraphs 27, 30, 37, 40, 105B and 105D of the 2FASOC;

9.26.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the 2FASOC.

9.31 It denies each allegation in paragraph 9.~~31~~26, and says that if, as alleged by the Respondent, coupe 463-504-0009 (De Valera) was harvested using the regrowth retention ~~and the seed tree harvesting~~ silvicultural methods (which is denied), those forestry operations have had, are having or are likely to have the impacts pleaded in paragraphs 28, 30, and 105B of the 2FASOC.

9.33 It denies each allegation in paragraph 9.33, and says that if, as alleged by the Respondent, coupe 312-510-0007 (Bromance) was harvested using the seed tree harvesting silvicultural method (which is denied), those forestry operations:

9.33.1 have had, are having or are likely to have the impacts pleaded in paragraphs 39A, 40 and 105D of the 2FASOC;

9.33.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the 2FASOC.

9.34 It denies each allegation in paragraph 9.34, and says that if, as alleged by the Respondent, coupe 312-510-0009 (Lovers Lane) was harvested using the seed tree harvesting silvicultural method (which is denied), those forestry operations:

9.34.1 have had, are having or are likely to have the impacts pleaded in paragraphs 39A, 40 and 105D of the 2FASOC;

9.34.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the 2FASOC.

9.35 It denies each allegation in paragraph 9.35, and says that if, as alleged by the Respondent, coupe 317-508-0010 (Swing High) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations:

9.35.1 have had, are having or are likely to have the impacts pleaded in paragraphs 29A, 30, 39B, 40, 105B and 105D of the 2FASOC;

9.35.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the 2FASOC.

9.36 It ~~admits that denies each allegation in paragraph 9.35, and says that if, as alleged by the Respondent,~~ coupe 462-504-0004 (Skerry's Reach) was harvested using the clearfell and seed tree harvesting silvicultural methods (which is denied), those forestry operations:

~~9.36.1 have had, are having or are likely to have the impacts pleaded in paragraphs 29B, 30, 39C, 40, 105B and 105D of the FASOC;~~

~~9.36.2 failed to comply with cl 2.2.2.2 of the Code as pleaded in paragraph 113A of the FASOC.~~

9.37 It denies each allegation in paragraph 9.37, and says that if, as alleged by the Respondent, coupe 288-516-0007 (Golden Snitch) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations have had, are having or are likely to have the impacts pleaded in paragraphs 29C, 30, and 105B of the 2FASOC.

9.38 It denies each allegation in paragraph 9.38, and says that if, as alleged by the Respondent, coupe 288-516-0006 (Hogsmeade) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations have had, are having or are likely to have the impacts pleaded in paragraphs 29C, 30, and 105B of the 2FASOC.

9.40 It denies each allegation in paragraph 9.40, and says that if, as alleged by the Respondent, coupe 287-511-0009 (Rocketman) was harvested using the regrowth retention harvesting silvicultural method (which is denied), those forestry operations have had, are having or are likely to have the impacts pleaded in paragraphs 29C, 30, and 105B of the 2FASOC.

3A. It admits sub-paragraph 10(aa).

4. As to paragraph 42, it:

4.1 does not admit that the Respondent has not finalised any proposed harvesting plan for the coupe, and says that:

4.1.1 it refers to and repeats paragraph 2:

4.1.2 the Timber Release Plan shows that all of the scheduled coupes are proposed for forestry operations by the clear-fell or seed tree retention methods between 2017 and 2018, and states the nett area in hectares expected to be logged within each of the scheduled coupes;

4.1.3 the Respondent's practice in each, some or all of the Logged Leadbeater's Possum Coupes was to plan and conduct forestry operations which have had, are having or are likely to have a significant impact on Leadbeater's Possum;

4.1.4 unless enjoined, in this coupe the Respondent will plan and conduct forestry operations which are likely to have a significant impact on Leadbeater's Possum;

4.2 otherwise denies each allegation therein.

5. As to paragraphs 43 – 70B, it refers to and repeats paragraph 4 and otherwise denies each allegation therein.

6. As to paragraph 71, it:

6.1 refers to and repeats paragraphs 4 and 5 and says that unless enjoined, in some or all of the Scheduled Leadbeater's Possum Coupes the Respondent will plan and conduct forestry operations which are likely to have a significant impact on Leadbeater's Possum;

6.2 otherwise denies each allegation therein.

7. As to paragraph 73, it:

7.1 does not admit that the Respondent has not finalised any proposed harvesting plan for the coupe, and says that:

7.1.1 it refers to and repeats paragraph 2;

7.1.2 the Timber Release Plan shows that all of the scheduled coupes are proposed for forestry operations by the clear-fell or seed tree retention methods between 2017 and 2018, and states the nett area in hectares expected to be logged within each of the scheduled coupes;

7.1.3 the Respondent's practice in each, some or all of the Logged Glider Coupes was to plan and conduct forestry operations which have had, are having or are likely to have a significant impact on Greater Glider;

7.1.4 unless enjoined, in this coupe the Respondent will plan and conduct forestry operations which are likely to have a significant impact on Greater Glider;

7.2 otherwise denies each allegation therein.

8. As to paragraphs 74 – 80, 82—92, 92B— 104B and 104D - 104E, it refers to and repeats paragraph 7 and otherwise denies each allegation therein.

~~8A. As to paragraph 104C, forestry operations in the Big River coupe 10.37;~~

~~8A.1 have had;~~

~~8A.2 are having;~~

~~8A.3 are likely to have;~~

~~a significant impact on the Greater Glider.~~

**Particulars**

~~————— The Applicant refers to and repeats the particulars at paragraph 32 of the Further Amended Statement of Claim and says that the particulars apply to the Big River coupe 10.37;~~

~~8B. Further, the Applicant says that Big River Coupe 10.37 falls within the definition of the Logged Glider Coupes in the Further Amended Statement of Claim, and paragraphs 40, 105C, 105D, 113A, 115AB, 115AD should be taken to include a reference to Big River Coupe 10.37;~~

8C. It admits subparagraph 104F(a).

9. As to paragraph 105, it:

9.1 refers to and repeats paragraphs 7 and 8 and says that unless enjoined, in each some or all of the scheduled coupes the Respondent will plan and conduct forestry operations which are likely to have a significant impact on Greater Glider;

9.2 otherwise denies each allegation therein.

10. As to subparagraph 113G(b), it denies each allegation therein and says that:

10.1 the Respondent pleads a conclusion of law;

10.2 it is artificial to seek to break down forestry operations within a coupe into multiple forestry operations for the purposes of s 38 of the EPBC Act and s 6(4) of the RFA Act.

11. As to subparagraph 113H(d), the Applicant refers to and repeats paragraph 2 above.

12. As to subparagraph 113I(c), it denies each allegation therein and refers to and repeats subparagraphs 10.1 and 10.2.

Date: ~~5 October~~ ~~8 November 2018~~ 25 January 12 March 2019

~~MARITA FOLEY~~

JULIA WATSON



.....  
Signed by Danya Jacobs  
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 reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~5 October~~ ~~8 November 2018~~ ~~25 January~~ 12 March 2019



---

Signed by Danya Jacobs  
Environmental Justice Australia  
Lawyer for the Applicant