

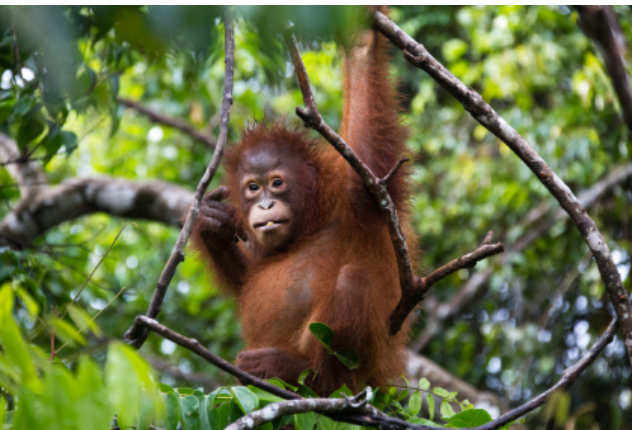


EPBC Green Tape *or* Extinction?

Submission by MyEnvironment Inc

**Senate Standing Committee on Environment and
Communications**





50,000 in the wild



1500 in the wild



Submission to the Senate Inquiry

The effectiveness of threatened species and ecological communities' protection in Australia by
MyEnvironment Inc. on behalf of the members of MyEnvironment Inc. 2012

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Executive Summary

In Australia, the Regional Forest Agreements have exempted Commonwealth powers under the Environmental Protection Biodiversity and Conservation Act 1999 and placed Commonwealth listed species under the management of the states in forests scheduled for logging since 1998. The 14 year absence of the EPBC Act - effectively the removal of so-called 'green tape' - has led to extinction trajectories for species reliant on forests where logging occurs in Victoria's Central Highlands. Our legal case focusses on the Central Highlands of Victoria, where a Regional Forest Agreement operates within the habitat of the federally listed endangered marsupial - the Leadbeater's Possum. Our Supreme court case examines the question whether the Recovery Plan objectives are clashing with the RFA objectives. We argue that the long term clashes of the objectives, and not being checked or revised after fire, has led to the ash forest ecosystem being breached in its carrying capacity and advancing toward a critical control point for collapse, due to the cumulative impacts of logging and fires.

Resource extractive industries, like industrial pulp logging, will ALWAYS challenge theoretical barriers to 'progress' by deploying shame campaigns and mount tempting fiscal returns to governments willing to loosen the reins. These were exactly conditions for which the Regional Forest Agreements found political life. The compromise was simple; a trade off of biodiversity richness in exchange for woodchip contracts to Japan. It was never sustainable, not in the true sense of the definition, but industry and political leaders knew they could get away with it for a decade undetected. The sensible 'sunset' clause at three years, pushed for by the Australian Democrats and the Greens back in the 1999 RFA Senate Inquiry, failed to be passed with support from the Coalition and Labor. Since that Inquiry, neither the state nor Federal government have measured the effect of woodchipping on native forest ecosystems in the Victorian Central Highlands. Where attempts have been made, as part of the RFA Review process, the reviews were 5 years overdue and are still incomplete.

The State of the Forest Reports, issued by the Victorian government to provide assurance to the Commonwealth that logging is sustainable, reported an absence of data for two thirds of the criteria with 23 forest dependent species in real decline and 49 forest species newly added to the list. The Forest Management Plans, that exempt the powers of the EPBC Act, remain unreviewed after 14 years of operations, despite being legal binding based on 'adaptive management'. The Wood Pulp Act, that drives 400,000 tonnes of woodchip into the Maryvale mill each year, has never been tested for sustainability. Science is revealing that forestry creates a more flammable forest system and intensifies the rate of fire spread in regrowth forests, this was first postulated and written about by government ecologists in 1994. Water loss in catchments is as high as 50% from logged areas for over 100 years. Every species in the RFA monitoring sites is in a population free fall. What has now come to light through freedom of information is that critical science that should have found its way into the comprehensive assessments in the development of the RFA's for the Central Highlands was censored. The 'dog's breakfast' called 'sustainable forestry' has left a legacy of debt, both economically and ecologically, has whittled sawmills down to a handful and communities do not have a legitimate opportunity for input because nothing gets reviewed.

In summary, The legal system designed to safeguard our forest dependent wildlife was subverted by the RFA's and their instruments that exempted the powers of the EPBC, the Forest Management Plans, are failing to arrest species decline. In areas where endangered species exists, VicForests

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are permitted to kill and burn their habitat to extract wood pulp in vast quantities that service contracts to Japanese owned corporations. This is legal in Australia because of the RFA's.

The solution in the Central Highlands is to cut the sustainable yield by 75%, cordon off a large contiguous tract of forest that meets habitat requirement for 40 hollow dependent wildlife, brings a large area of forest into old-growth succession and end industrial clearfell logging.

This submission is divided into two parts:

1. An essay - **The Leadbeater's Possum Case - the ethics of extinction**

A summary of the life of the Leadbeater's Possum in the Central Highlands Forests of Victoria. The great ash forests - 60 km's to the North East of Melbourne. The Leadbeater's is the sentinel of Victoria's tall forests and with it's demise follow a range of unassailable ecosystem traps. The logging and burning of these forests negatively effects hydrological benefits, pollination, contributes to water pollution, increased bushfires.

2. Literature review and reports - **Regional Forest Agreements - A 14 year insight into a system in which the EPBC does not operate** - *Reports from 1971 to the present day outlining changes to the habitat of the Central Highlands*

A literature review of the Regional Forest Agreement operations in area's where federally listed species dwell. The effects of the 14 year old RFA's are now well documented and the extinction trajectory of a keystone species like the Leadbeater's Possum is currently being enacted. With 61% of the states Leadbeater's habitat residing in the RFA areas, this extinction trajectory shows that the state based regulatory frameworks are not effective. If the system was 'adaptive' as it claims, then the Leadbeater's would not be worse off now than when it's Recovery Plan was signed in 2000. The Leadbeater's was supposedly protected by a regulatory system, yet that system has remained unfunded, un-reviewed and unmonitored and its population has now reduced to 1500 in 2012, from 4,500 in 2000, and its chances of survival are considerably reduced.

ESSAY: The Leadbeater's Possum Case - the ethics of extinction

Anthropomorphising...

It's minus 2 degrees outside. You're asleep curled up next to your mate in a warm bed. Your children are curled up, nestled into the warmth of your body. Softly you awaken to hear a muffled drone, like machinery, the house vibrates and the other members of the family rouse in panic. Suddenly a vertigo-like feeling grips you as your home starts to fall. You hit the ground with a deafening thud as the machinery tears into the walls. You are crushed by the weight of your home against you and your family. Those of you whose back is not broken, try to get out from beneath the enormous pressure. The machinery keeps cutting and smashing and a home to generations of your family, is lifted, stripped, split and put into a growing pile of logs for the paper mill.

You scramble to safety in the freezing conditions. Now you are cold and homeless, if you manage to locate an unused hole in a tree you may survive overnight temperatures - it is too cold to survive outside.

When the men are done, they will burn what remains of the bodies of your young, your food and the once complex forest that surrounded your home. Paths navigated by your ancestors no longer exist. Frightened and alone you will become prey, starve, be attacked by territorial neighbours and die.

The men move on to your neighbors homes to repeat the horror. Why? To make Nippon Reflex paper so humans can record their world on yours. Your kind is going extinct as we trade your kind for a ream of white fibre.

The average length of time for a piece of paper is a month. The average life span of a Leadbeater's is 7 years and the average age of the forest they dwell in is beyond a human life time.

It takes three weeks to clear 38 hectares of forests, the same size as the Victorian Botanical gardens. It employs 6 men and, without grants, has not produced a dividend to Victorian's since 2005.

THE COLD FACTS

There are thought to be around fifteen hundred Leadbeater's Possums (*Gymnobelideus leadbeateri*) left in the wild today. This tiny marsupial is Victoria's faunal emblem. The Leadbeater's was thought to have gone extinct but was rediscovered in 1961. It was originally named the 'fairy possum' for it's unrivaled agility leaping amidst the tops of the tallest flowering tree's on earth - the giant mountain ash. At dusk, Leadbeater's possums emerge from their nests in hollows of the tree's and spread out to forage in the canopy, often making spectacular leaps from tree to tree (they require continuous understory to travel). The tiny 130 gram possum is a primitive, relict, non-gliding petaurid and, as the only species in the *Gymnobelideus* genus, represents **an ancestral species**.

The Central Highlands forests, 60 kms from Melbourne, are the only place Leadbeater's exist on earth and it is also the largest source of native woodchips for Nippon owned Reflex copy paper, logged by state government logging agency VicForests.

Victoria's Leadbeater's Possum is:

- Listed as 'endangered' under Commonwealth law.
- Listed as 'threatened' by the state law.
- Red-listed 'endangered' by the International Union of the Conservation of Nature
- 52nd EDGE species on the brink of extinction and rated as globally significant by the London Zoological Society.

HABITAT



The Leadbeater's Possum makes its home in the tall forests of the Central Highlands whose epic heights have rivaled the Californian Redwoods. The giant montane ash forests grow on a narrow rainfall band in the mountains around Melbourne and contain the only sustainable populations of Leadbeater's Possums left in the world. The average old age of a Mountain Ash tree is around 250-300 years with some trees older than 600 years and still growing. Overtime these trees flourish and decay creating hollows, left alone, to ultimately become decaying relics that continue to provide nests for Leadbeater's until final collapse.

Today only 1.2% of old growth montane forest remains in the Central Highlands¹ - unburnt and unlogged. This forest type is the traditional habitat of the Leadbeater's Possum although they can survive in sub-optimal conditions like nest boxes for a period. Originally this possum was thought to have colonised forests as far as the Bass River. Today the removal of their habitat has left tiny colonies in the Yellingbo swamp, a remnant alpine colony on Mt Baw Baw and more sustainable colonies in the montane forests of the Central Highlands - the forests vulnerable to woodchipping.

¹ <http://www.theage.com.au/environment/conservation/just-1-of-central-highlands-old-growth-survives-20110911-1k498.html>

Extinction of a montane ecosystem:

Out of 31,000 hectares of Alpine Ash forest, there exists only **97 hectares of old growth left unlogged and unburned (DSE, Lindenmayer 2011).**

- Out of 161,000 hectares of Mountain Ash forest, there exists only **1,571 hectares of old growth left unlogged and unburned (DSE, Lindenmayer 2011).**

Whilst a meagre 1.2% old growth remains, Australian National University scientists claim there should be around 80% old growth ash forest remaining if logging had been managed sustainably.

The Leadbeater's possum faces a predicted bottle neck in suitable habitat until 2065 when, if the majority of logging was discontinued, new hollows would develop in successional, aging forests. It can take 120 years for a hollow to start to develop in a tall ash tree, earlier if the tree's have been damaged mechanically or by disturbance like fires, wind and other tree damage. The habitat shortage was a dictum decided by 'salvage logging' that ran until 1970's, after the fires of 1939. Since then, extensive clearfell logging and a '[conversion of over mature forests](#)' program by the Forestry Commission has erased vast regions of mature hollow bearing mountain ash forests across the Central Highlands. The extinction trajectory of every hollow dependent ash forest animal has been sown by this act of conversion.

There are 40 vertebrates dependent on hollows for homes in the Montane ash schlerophyll forests.

The 'Landscape Traps' paper² by an international science team discusses repeated disturbance influences in forests ultimately causing a tipping of ecosystems into self-destruction, the likes of which creates deadly fire regimes and carbon emissions, water loss and functional extinction. The scientists stress however, that landscape traps can be detected before they are irrevocably established.

² Newly discovered landscape traps produce regime shifts in wet forests
[David B. Lindenmayer](#)^{a,1}, [Richard J. Hobbs](#)^b, [Gene E. Likens](#)^{a,c,1}, [Charles J. Krebs](#)^d, and [Samuel C. Banks](#)^a

\$1.27 million to save forest contractor jobs

Thursday 30 June, 2011



Agriculture Minister Peter Walsh, logger and secretary for forestry Gary Blackwood and National party member for East Gippsland Tim Bull - hand more tax payer dollars over to East Gippsland logging industry, whilst VicForests fail to pay a dividend again to the Victorian tax payers in 2011.

What is the State Government Doing?

Aside from handing more money to a financially unsustainable industry, the Victorian government are opening up new forests for logging including parks, reserves and catchments³. Minister Walsh, Gary Blackwood and environment Minister Ryan Smith are also changing the Code of Forest Practice and Flora and Fauna Guarantee Act 1988 to allow for the secretary of DSE to open habitat to logging - habitat that would normally be afforded protection (Proposed variation to the Code [link](#)).

According to the Australian National University resource science printed in [The Age](#), **logging plans by the Baillieu government will log out all remaining ecologically mature ash forests in state forest within 12 years**. Premier Baillieu has also committed to logging National parks by way of 'thinning' to ensure 20 year logging contracts can be met. The Timber Industry Action Plan, written by the Minister for Agriculture & Water Peter Walsh and Secretary for Forestry (logger) Gary Blackwood, commits Victoria to pay out these 20 year logging contracts if a policy change or resource shortage occurs. These contracts are being negotiated now.

Extinction - what price?

According to the MyEnvironment Vs VicForests Supreme court case affidavit of VicForests planning manager Lachlan Spencer:

VicForest turn over a large quantity of wood value yet return nothing to the state for that resource usage directly. In the Central Highlands over the 2011/2012 period, VicForests paid \$45 million to harvesters and \$45 million to haulers for the cutting and delivery of 1 million cubic metres (per annum) of pulplog, and 547,000 metres of sawlog. VicForests made \$6 million to cover expenses such as roads and the Victorian tax payers recieved nothing. VicForests have not paid a dividend to

³ http://www.dpi.vic.gov.au/data/assets/pdf_file/0010/140959/TIAP_web.pdf - Action 1.1

Victorians since 2005. Every year all water authorities are legally bound to pay a dividend for the use of the water from these same forests.

Further to this, according to the URS Treasury Report into VicForests, VicForests are over-predicting D grade sawlog by 53%. If wood contracts are being 'locked in' over 20 years with this margin of error, and additional 50% of wood will need to be sought to meet sold contracts for D logs. Where does this leave the habitat of the endangered Leadbeater's Possum give 61% of its habitat falls in state forests open to logging?

Inventory of standing timber stocks

VicForests' inventory of standing timber stocks is inadequate in providing precise information for managing the supply chain efficiently.

URS undertook a reconciliation of coupe volume estimates and actual harvested volumes at a product level. The data includes sales from August 2007. The analysis showed that the volumes were over predicted for every product across East Gippsland (EG) and Central Highland (CH) regions for all operation types, except for residual logs from thinning and single tree selection operations in East Gippsland. The variance between predicted and actual volumes ranges from 4% to 56% for individual products. Table 4-3 provides results of the analysis for green clearfell operations. Results for other harvesting systems are provided in the relevant appendix.

Table 4-3 Comparison of coupe volume estimates and actual harvested volumes (m³) for green clearfell and seed tree operations, by region

Region**	Product	Predicted##	Actual	Variance#
CH (102)	B grade	188,835	124,169	-34%
	C grade	198,134	136,646	-31%
	D grade	66,907	31,571	-53%
	Ungraded Sawlog		969	
	Total D+ sawlog	453,876	293,354	-35%
	E grade		108,429	
	Pulplog		708,955	
	Total residual log*	947,724	815,384	-14%
	Other		1,707	
	CH total product	1,401,600	1,110,445	-21%
EG (214)	B grade	45,860	32,495	-29%
	C grade	186,203	163,568	-12%
	D grade	123,196	53,999	-56%
	Ungraded Sawlog		383	
	D+ sawlog	355,259	250,446	-30%
	E grade		56,680	
	Pulplog		651,057	
	Total residual log*	680,247	707,737	4%
	Other		889	
	EG total product	1,035,506	959,072	-7%

Source: VicForests' data and URS interpretation

* Total residual log includes E grade and pulp log volumes.

** Numbers in brackets refers to the number of coupes included in the analysis.

Variance is the actual volume as percentage of the predicted volume.

Volumes are not predicted specifically for ungraded sawlog, E grade or pulplog.

VicForests do not build the risk of fire into economic or ecological safety thresholds. The most recent science by Melbourne University's Prof. Michael McCarthy⁴ predicts, using mathematical likelihood's for 80 year logging rotations. Prof. McCarthy calculates that there is a 45% likelihood

⁴ <http://musse.unimelb.edu.au/december-12-101/guest-column-associate-professor-michael-mccarthy>

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of the forests, under contracted sales in state forests, burning. This can be interpreted as a major overestimation of wood yields and a lack of planning for long term ecological sustainability.

The commercially available forest has already run out if we measure them against ecologically safe thresholds, extinction trajectories support this depletion. With 61% of Leadbeater's habitat on VicForests managed land the Leadbeater's Possum is destined for industry driven extinction. VicForests set their own sustainability thresholds now and they are not formally recognising risk in over-estimating yields and calculating hollow loss led extinction.

VicForests Wood/Waste ratio

According to VicForests 'sustainability' report, they do not produce A grade timber and less than 1/3 of their production is sawlog (grades E to B). Of this, more than half becomes residue and waste during squaring and processing of the logs. So around 85% becomes residue/waste that goes to chip and pulp, 11% is used for low grade products like pallets and palings, 4% is of sufficient quality for use in buildings, of which less than half is of appearance grade. This means that their high value product only makes up 2% of their volume. Their overall business model is that of a commodity woodchip industry that typically rely on government subsidies.

Richer Values

CARBON - The Montane Ash forests are the most carbon dense forests in the world in their mature state storing an average of 1500 tonnes of carbon in above ground biomass per hectare⁵. After a fire, around 10% of the carbon can be lost, after a logging event, around 60% is removed and burned. Because the forests are kept on a logging rotation cycle of 40-80 years, the tall ash forests, who reach their old age at 250 years plus, never house their optimum carbon stores - becoming contributors rather than banks.

WATER - The Central Highlands house Melbourne's free water supply in big natural catchments, filtered and purified by ecologically mature, wet forests - partly protected from logging. Mature forests produce clean water and are less prone to burn whereas young regrowth forests, converted by logging, are more flammable and drink huge quantities of water to reach their epic 100 metre heights. Around 50% of the water is lost on a site that has been logged or burned, water that would otherwise flow into drinking water catchments. The forests are kept at a young regrowth state after logging (optimum for pulp) so they never return maximum water release at aged 120 years and older, but rather stay thirsty at 50-60 years (peak tree growth period). Logging is concentrated in the high water yielding areas of the catchments because this is where the prized ash forest grow⁶. It's not how much of the catchment you log, it is what species you log and where they sit in the rainfall zones that result in maximum water loss. VicForests target this area.

BIODIVERSITY- Rich and complex biodiversity is erased after logging and the replacement tree's are much like a plantation with the site absent of most of the biodiversity that existed prior to clearfell logging and log coupe burning. This is precisely why ash forest wildlife is going extinct

⁵ <http://epress.anu.edu.au/titles/green-carbon>

⁶ http://www.tcha.org.au/Baw_Baw_Report/10_Water_files/Chapter%2010.pdf

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(slowly and rapidly) according to a DSE survey of Regional Forest Agreement (RFA)⁷ sites. The state have not sustainably managed the 'resource' to coexist with other activity like that of wildlife. Logging, weeds and fires has reduced habitat for arboreal and aquatic species dependent on healthy forests, streams, fens, swamps and bogs.

The Comprehensive and Adequate Reserve (CAR) system, by which the Federal Government finds assurance to permit the logging of the ash forests is deficient in its actual calculations. The CAR Reserves (underpinning sustainability claims of the RFA) are grossly under represented. That is, where the RFA Agreements claim a certain forest type and age class (old growth) is represented, the actual reserve is found to be two-thirds less. A clear breach as the state should have added more old forest to make up for the loss after three major fires. The problem is...there isn't any more.

According to forest age class survey work completed in 1996 in Toolangi (H.Possingham and D. Lindenmayer), there exists only 25 hectares of old growth forest remaining in the Murrundindi forest block (3,500 hectares) in Toolangi and this is scattered throughout 40 separate patches. Toolangi has been subject to 100 years of intensive forestry and the the last old tree's are being risked by forestry burning, if they are not cut as hazardous tree's despite the huge deficiencies in older age class forests.

A DSE report on the destruction of old growth in Toolangi can be found in the Drop Box.

During 1989, public concern was expressed over the potential impacts of major road networks and logging on environmental values in forests in the Central Highlands of Victoria. As a result, in September 1989 the then Minister for Conservation, Forests and Lands announced a new approach to forest management planning, including the establishment of a Statewide Planning Policy Advisory Group. The functions of the Advisory Group included reviewing a Departmental report on proposed logging arrangements and associated road works scheduled for the following three years in the forests of the Central Highlands, and to advise the Minister accordingly. As a consequence, the construction of permanent roads in the Central Highlands was temporarily suspended pending the completion of environmental assessments.

Initially, environmental assessment teams were established by co-opting appropriate Departmental staff. However in January 1990, the Director General of the Department approved the advertising of '.....new flora and fauna positions.....' in the Central Highlands to assess the impact of roading and logging proposals on biological values in these forests. A team of six biologists was subsequently established in September 1990 and located at Warragul (Gippsland Area).

The initial focus of the survey team was to assess the impacts of proposed permanent roadlines which were needed to access immediately required logging areas. Thirty-five roadlines in the Central Highlands were assessed by the team. These surveys are no longer required by the Department except in special circumstances. The longer-term focus for the team was to conduct broad area ecological surveys on a management block basis, similar to pre-logging surveys. Actual pre-logging ecological surveys were only required to be undertaken in management blocks where less than 50% of the commercially harvestable forest has been logged (Government of Victoria 1987).

⁷ <http://www.myenvironment.net.au/index.php/me/Work/Forests/DSE-Goulburn-Broken-RFA-survey>

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Areas of critical Leadbeater's habitat (termed Zone 1A), includes virtually all of the older-aged forest in the Central Highlands. This 'old growth' is technically protected in the proposed CAR Reserve System in either the Yarra Ranges National Park or in the Special Protection Zone in State forest. The last 'old growth' study was commissioned in 1996 - Study of Old Growth Forests in Victoria's Central Highlands (Forest Service Technical Report 96-3). This report states that there is a total of **5,070 hectares of Wet Forest (ash forest dominated)** reserved, a current resource summary from ANU, DSE and Melbourne University states that in the Central Highlands there **only exists 1, 668 hectares of old growth Wet Forest** (unlogged/unburnt ash forest) which is less than 1% of the total old growth ash forest remaining, 67% less than that claimed is protected by the CAR reserve.

The RFA media⁸ claimed that 'old growth' forest is relatively scarce as a result of past agricultural selection and wildfire' but this was misleading. The old growth forests of the Central Highlands were subject to prolonged conversion⁹. Today the effect of that conversion of 'over-mature to regrowth' forest has meant species richness has been simplified and species dependent on old forests are going extinct - like Victoria's Leadbeater's 'fairy' Possum. No old tree's, no hollows, no homes, no possums.

Why Toolangi for a court case?

Toolangi contains the western most populations of the Leadbeater's possum and is subject to the first concentrated wave of extinction. This event was initially predicted in 1996 (Lindenmayer and Possingham) and has been re-assessed in several recent studies including a DSE/Arthur Rylah Institute study (2012) that found no Leadbeater's Possum's persisted in any of the RFA monitoring sites in Toolangi¹⁰. Toolangi has almost no old forest today due to logging, the last small patches grow in tiny reserves and sporadically across several logging coupes - **three of which are the subject of the Court Case; Gun Barrel, South Col and Freddo.**



Toolangi was entirely ring barked by fire on Black Saturday and today contains an isolated colony of Leadbeater's. No Leadbeater's have been recorded in burnt areas (ANU 2012). **42% of the global population of Leadbeater's habitat was burnt on Black Saturday over several hours.**

MyEnvironment obtained a rare photo of a Leadbeater's from a camera in a patch of forest near one of the court case logging coupes - Freddo.

A tiny family of critically endangered Leadbeater's Possum have been captured on camera on the edge of a VicForests logging operation in the contested Toolangi logging zone.

⁸ <http://www.myenvironment.net.au/index.php/me/Work/Forests/RFA-Media-Release>

⁹ <http://www.myenvironment.net.au/index.php/me/Work/Forests>

¹⁰ <http://www.myenvironment.net.au/index.php/me/Work/Forests/DSE-Goulburn-Broken-RFA-survey>

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The court case is underway to protect three critical habitat area's in Toolangi, from being logged. One of the site camera's has produced 10,600 photo's showing several Leadbeater's (fairy) possums making a nest in a collapsing tree on the edge of the partially logged 'Gun Barrel' coupe.

Whilst we do know a great deal about the possum itself, its role in the ecosystem in which it lives has not been the subject of deep exploration. In new science and monitoring work from the United States, Winston P. Smith reveals that as indigenous forests across North America are transformed, the implications of these changes are far reaching and include the loss of habitat, biological diversity, and ecological services, as well as diminished air and water quality. Smith states that the 'sentinel' of the forest , the Northern Flying Squirrel and it's acute sensitivity to disturbance at multiple spatial scales, renders it an effective sentinel of forest ecosystem processes. The Leadbeater's may well be ours as it too achieves its highest density in old growth forests.

The Baillieu government is logging these last reserves for Japanese owned Reflex copy paper despite the habitat meeting the Commonwealth criteria for Leadbeater's habitat. The population viability of this animal is bleak based on the decay rate of it's home under climate change. The fire's and the logging damage. Currently, an archaic planning framework permits the clearfelling of the animals habitat, a tripswitch mechanism does not exist to pause ecologically damaging processes and this is the single most unethical point in our findings. Where our court case found that laws create the definition of the species habitat, laws have not been designed to offer a moratorium tripswitch. The federal Recovery team found this out when they requested one¹¹. The Recovery therefore fails.

MyEnvironment Inc. believe that the laws; the Flora and Fauna Guarantee Act - Action Statement, and the Environmental Protection Biodiversity and Conservation Act - Recovery Plan, set down descriptions and prescriptions for identifying habitat and protecting them - called Zones. Justice Osborn, in the Supreme Court, disagreed that the Action statement stipulated protections from logging for these 'Zones' and judged the protection of the Zones were found exclusively in a planning framework called the 'Forest Management Plan' (FMP). This forestry framework is born from the 1998 Regional Forest Agreement process and is an outdated, un-tested and a poor reflection of the Action statements definition of habitat. The FMP is 14 years old and has never been subject to review despite it's efficacy predicated on regular reviews - the RFA itself only exempts the powers of the EPBC Act if reviews are regularly undertaken. What our case has made clear is that due to an EPBC exemption being made by the Commonwealth in the RFA, logging is permitted to kill and ultimately make extinct, the endangered Leadbeater's Possum.

Did His Honour get it wrong?

One of the bases for our appeal is that the FFG Act Action statement and EPBC Act Federal Recovery Plan, by law, should protect the endangered possum from logging as this is what the plans were designed to do - this is why we have these laws. The science has shown, inarguably, that the species is set for extinction in a matter of decades less with another major fire. Justice Osborn, in his summary, agreed that the evidence is compelling for an urgent review of the species management. This suggestion makes clear that he understands the threats, why make the suggestion otherwise.

¹¹ <http://www.theage.com.au/environment/possum-protection-under-investigation-20121101-28nc1.html#ixzz2BJFoGauA>

'MyEnvironment has demonstrated a strong case for the overall review of the adequacy of the reserve system intended to protect LBP habitat within the Central Highlands Forest Management Area. The [2009] bushfires have materially changed the circumstances in which the existing system was planned and implemented and there is, on the evidence, an urgent need to review it' Justice Robert Osborn. 2012

Our case shows that these court case coupes - would be ideal to add to a reserve. During the trial, VicForests mounted the case that 198 'materially similar' coupes could not be cut if we were accurate in our understanding of the law. Those 198 coupes, according to VicForests assessments, would also be forest prospects for reserve additions. However, as VicForests handed the files to the Judge, their contractors were cutting these materially similar coupes. We suspect many of the 198 coupes had been cut as the figure of 198 materially similar coupes down sized to 168 materially similar coupes during the trial. This forest is irreplaceable and will take at least 150 years to produce a hollow, let alone a complex and rich understory.

With only 1500 Leadbeater's Possums left and disappearing at an alarming rate due to fires and logging activity, some scientists claim the Leadbeater's is one of the most 'well managed extinctions' in Australia, with Australia leading the world in the highest amount of species managed into extinction¹². There is little that we do not know about what this animal needs to survive, yet we continue to perpetuate it's extinction in full knowledge.

The Lake Mountain colony of Leadbeater's slipped from approx. 350 animals to just 3 after Black Saturday. Many of these animals were living in nest boxes provided by a community goodwill program as the habitat was collapsing. Today the last two possums are living in the Melbourne Zoo and this Alpine population is functionally extinct. A small closely related population lives in an area below Lake Mountain, some of which was protected by our group in 2006 from logging. In one hour, an entire population can be pronounced as functionally extinct from a fire. Where is the risk management for our species? There are strong parallels between the safety nets for children under care of the state and wildlife in state forests. The ethics of a nation can be clearly measured by the way in which they treat their vulnerable.

Extinction Debt, Financial Debt - Best public good for whom?

Victoria's native forest logging has not returned a dividend to the Victorian people for 5 years. The states logging agency VicForests receive our forests freely and yet have run a debt every year since their inception in 2004 (removing government prop up grants). They have never been formally audited by the Victorian Auditor General. Some commercial analysts¹³ claim that they are insolvent but as they are exempt from normal business laws under the Trade Practices Act they cannot be challenged. VicForests are essentially tied to debt by way of the Wood Pulp Act that contracts cheap logs to Australian Paper with a small royalty fixed from 1996 to 2030. The Original agreement commenced in 1936 and continues to today through successive ownerships of

¹² <http://www.smh.com.au/environment/animals/leadbeaters-possum-faces-managed-extinction-without-action-20120326-1vuxe.html>

¹³ <http://www.theage.com.au/business/stateowned-vicforests-logging-firm-nonviable-20110102-19d0k.html>

Paperlinx, Amcor and now Nippon. Bound to the states fixed price long term contracts with Nippon Paper means VicForests operating environment appears 'condemned'.¹⁴

According to VicForests annual report, the court case is costing the state millions of dollars and yet evidence in our case (Schirmer 2012) revealed that they could have simply removed the three coupes without any cost to their bottom line, instead they chose to fight. They could have protected a near extinct animal in Toolangi but chose to fight the community instead. This is questionable decision making under the Model Litigant rules of behaviour for a government business enterprise. VicForests, according to Treasury's URS report, could risk their long term access to the supply if they lose their 'social licence'. Over the course of this year more than 50 arrests have ensued, many of whom live next to the contentious logging. Coupled with poor stakeholder engagement strategies, using police and dogs on community and naively assuming that they can ignore the problem, both Australian Paper and VicForests have lost significant credibility. Their long term relationship maybe seeing out it's final days.

Our non-government organisation is trying to do what the Commonwealth should be doing - protecting the habitat of an endangered species listed under Commonwealth law yet we are struggling to achieve this even with the green tape in place. The state laws that should have protected this animal have been written by Forestry Commission and have thus far failed to enact protection for a near extinct animal from logging. This is the yardstick by which the state must be judged on their conformance with the RFA Act 2002, EPBC Act 1999 and FFG Act 1988. If something is going extinct due to a threatening process recognised under state and federal laws, and this is permitted under an exemption clause by the Federal government, it is fair to say that conformance to the Federal government expectations for the EPBC exemption to exist, has not been met. Extinction means 'ecological sustainability' cannot be claimed and a question mark also exists as to how the Commonwealth government is now meeting it's UN obligations under the Convention on Biological diversity.

This is why MyEnvironment Inc. has risked it's own extinction to save this extraordinary little animal, for it's demise heralds a much more frightening picture around the ethics of law, international obligations and the yardsticks used to measure resource extraction against ecosystem health. When the forests in which this tiny animal persists are logged and burned, the hydrological impacts, rainfall reduction, effect on pollination, water pollution, increased bushfires and the collapse of Melbourne's most critical 'ecosystem' are non-refundable, nor repairable. We act now or we sleep through the alarm and foot a bill none of us are prepared for.

¹⁴ <http://www.theage.com.au/victoria/vicforests-operations-condemned-20110222-1b42e.html>

Habitat of the endangered Leadbeater's Possum



Picture 2. The colony of Leadbeater's Possum living in a stag on the edge of the court case coupe: 'Gun Barrel'

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Picture 3. A typical Central Highlands logging operation (Powelltown) in which old growth 'stags' - habitat for the Leadbeater's Possum - are logged and burnt.

Regional Forest Agreements

A 14 year insight into a system in which the EPBC does not operate

Reports from 1971 to the present day outlining changes to the habitat of the Central Highlands



The Acheron - Paradise Plains. A catchment for the Goulburn Broken that sits between Melbourne's O'Shannassy and Maroondah water catchments. Layers of disturbance have turned this catchment into a dead, 'silent forest'.

Forestry indelibly imprints across the forest estate

1970 Legacy of the Forest Commission - RFA

Setting the space for the a commodity pulp program - 'original forest' conversion since 1940 after the 1939 fires.

[Report 1](#) - Steavenson plan - request for conversion of 'over-mature' forests.

[Report 2](#) - The planning document for the conversion of Marysville's old-growth forests.

1996 Wood Pulp (Forests) Act - a legal contract to extinction

This is a long term commercial native woodchip contract between the state government and the owners of Maryvale Mill. The contract was originally drafted in 1936 and continues till the present day. The legal contract is an Act to provide forest resource from catchment area's close to the Maryvale Mill, it is not hinged to any environmental checks and balances. ecological assessments nor review yet it binds our catchments to provide massive quantities of woodchips to Nippon Paper, at a fixed price, from 1996 -2030. [link](#)

(2) The Secretary shall be bound in each year to make available to the Company or to have the Department deliver to the Company as the Plan of Utilization may require from areas of forest as provided in this clause and in accordance with a Plan of Utilization a minimum annual supply of pulpwood which shall be;

(a) in each of the years 1996 - 1997 to 2003 - 2004 inclusive - 500,000 cubic metres;

(b) in each of the years 2004 - 2005 to 2006 - 2007 inclusive - 450,000 cubic metres;

(c) in each of the years 2007 - 2008 to 2009 - 2010 inclusive - 400,000 cubic metres;

(d) in each of the years 2010 - 2011 to 2029

- 2030 inclusive - 350,000 cubic metres, of which at least 300,000 cubic metres shall be made available to the Company or delivered by the Department to the Company as the Plan of Utilization may require from mountain forests inside the Forest Area.

(2) Royalty on pulpwood obtained by the Company during the period 1 July 1995 to 30 June 1996 is acknowledged to have been payable pursuant to the original [agreement](#) at the rates following:-

Pulpwood Class Rate in \$ Per Cubic Metre

Ash species from within the Forest Area \$11.05

Mixed species from within the Forest Area \$ 8.46

Pulpwood of any class from outside the Forest Area \$ 8.46

All of this maybe construed as a [Public Cartel](#) arrangement as the contract is exclusive, locked in from 1996 - 2030 and fixed in price. A 'fixed price' long-term contract or 'legacy' contracts as they are referred to by the URS Treasury Report 2010 [link](#)- are considered a financial risk to Victoria (URS 2010).

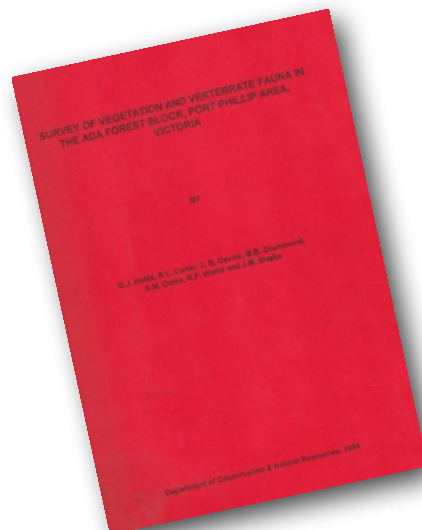
1998 The RFA issued on incorrect information

The Block Reports - omitted from RFA development process

In 1995, five Government environment reports were completed on the conservation significance of forest blocks in the Central Highlands;

The Block Reports (Reports available on the drop box link)

- **Ada Block**
- **Bunyip Block**
- **East West Tyers**
- **Cascades**
- **The Acheron**



The reports opened with the statement:

'In 1989, public concern was expressed over the potential impact of major road networks and logging on environmental values in forests of the Central Highlands of Victoria'.

As a result, in September 1989 the Minister for Conservation, Forests and Lands announced a new approach to forest management planning, including the establishment of a Statewide Policy and Planning Advisory Group.

As a result, in September 1989 the then Minister for Conservation, Forests and Lands announced a new approach to forest management planning, including the establishment of a Statewide Planning Policy Advisory Group. The functions of the Advisory Group included reviewing a Departmental report on proposed logging arrangements and associated road works scheduled for the following three years in the forests of the Central Highlands, and to advise the Minister accordingly. As a consequence, the construction of permanent roads in the Central Highlands was temporarily suspended pending the completion of environmental assessments.

Initially, environmental assessment teams were established by co-opting appropriate Departmental staff. However in January 1990, the Director General of the Department approved the advertising of '.....new flora and fauna positions.....' in the Central Highlands to assess the impact of roading and logging proposals on biological values in these forests. A team of six biologists was subsequently established in September 1990 and located at Warragul (Gippsland Area).

The initial focus of the survey team was to assess the impacts of proposed permanent roadlines which were needed to access immediately required logging areas. Thirty-five roadlines in the Central Highlands were assessed by the team. These surveys are no longer required by the Department except in special circumstances. The longer-term focus for the team was to conduct broad area ecological surveys on a management block basis, similar to pre-logging surveys. Actual pre-logging ecological surveys were only required to be undertaken in management blocks where less than 50% of the commercially harvestable forest has been logged (Government of Victoria 1987).

The block survey reports provide information to managers to assist with decisions relating to proposed road works and timber harvesting in those areas.

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This is the second flora and fauna survey report for the Central Highlands Flora and Fauna Survey Team, the first being the Flora and Fauna Survey Report of the Eastern and Western Tyers Forest Blocks and adjacent south-eastern slopes of Baw Baw National Park (Davies et al 1994). Another two surveys have been completed for which reports are being prepared, namely Cascade Forest Block (Hollis et al, in prep.), Gippsland Area, and Bunyip Forest Block (in prep.), Port Phillip Area

Most importantly, when the RFA Steering Committee were developing their conservation planning for the RFA for the Central Highlands, the ecologists who authored this work, were ordered by Victorian Forestry officials **not to** provide these reports as input, they were ordered to 'burn' them and retain only the timber modelling data. This can be confirmed by one of the authors Dr Greg Hollis.*

As a consequence of this omission, key area's of high grade merchantable ash forests were withheld from conservation protection. The Advisory committee did not provide conservation data into the development of the RFA's for the Central Highlands. Today's [surveys of those RFA sites](#) reveal that every species is suffering due to population decline from fires and logging. The RFA's are predicated on incorrect information due to this corruption.

Central Highlands Regional Forest Agreement Directions Report

During 1995 the Commonwealth and Victorian governments undertook a process of identifying Interim (or Deferred) Forest Areas in order to provide interim protection for forests that may be required for a CAR Reserve System while RFAs are being completed.

The Interim Forest Agreement (IFA) between the Commonwealth and Victoria was signed in January 1996.

This report has been prepared by the RFA Steering Committee to assist stakeholders and the broader community to have input to the development of a Regional Forest Agreement (RFA) for the Central Highlands. The role of the Steering Committee is to manage the development and finalisation of the RFAs in Victoria and to ensure that the processes associated with the development of RFAs are consistent with the Scoping Agreement signed in 1996. This report builds upon information contained in the Comprehensive Regional Assessment (CRA) report released in July 1997, and the results of community consultation following the release of the CRA report.

It addresses:

- how the proposed Comprehensive, Adequate and Representative (CAR) Reserve System satisfies the national forest reserve criteria (JANIS 1997);
- the elements of ecologically sustainable forest management (ESFM) which are integral to the development of a RFA;
- industry opportunities the implications associated with these opportunities; and
- the links between the RFA process and other statutory processes, particularly those related to environmental impact legislation, World Heritage, National Estate, endangered species protection and Native Title issues.

The Report continues to lay claim to the ecological integrity of the plan for endangered species.

Following the 1994 LCC review and the development of the IFA in 1995, the Department of Natural Resources and Environment has undertaken a comprehensive planning process for the State forest areas in the Central Highlands. **In addition to the 180,000 ha of the Central**

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Highlands included in the dedicated reserve system, the **Forest Management Plan proposes to set aside substantial areas of forest in the Special Protection Zone (SPZ) to protect significant biodiversity values** in the region. The Plan contains a **range of strategies to conserve** endangered flora and fauna, **including Leadbeater's Possum**, large forest owls, Tiger Quoll and Spotted Tree Frog, Tall Astelia and other rare plants.

But the plan failed even with the best of intentions.

1998 Federal Government claims commitment to Ecological Sustainability as part of the RFA

RFA Media commitment to the Leadbeater's Possum - [link](#)

Recovery Plan for Leadbeater's fails nevertheless

1997 Overall Objective:

To downlist Leadbeater's Possum from endangered to vulnerable within 10 years based on the IUCN (1994) criteria of population trend and size, extent of occurrence, probability of extinction, and the management of habitat towards a target of no more than a 1% probability of extinction over 250 years throughout the forest within its current range.

Leadbeater's not recovering - from 'Endangered' to 'Critically Endangered'

The attached submission, by Dr Dan Harley of Zoo's Victoria and Prof. David Lindnemayer of the Australian National University, to the Threatened Species Scientific Committee for assessment of Leadbeater's Possum, is tantamount to conceding the species Recovery Plan has failed. (see Drop Box).

Victoria ultimately fails conformance with the RFA:

The RFA specifically provided exemption of the EPBC Act on the grounds that a strong system of protection exists by way of the CAR reserve. This reserve does not meet species requirements so it is going extinct. Justice Osborn found this to be the case.

'MyEnvironment has demonstrated a strong case for the overall review of the adequacy of the reserve system intended to protect LBP habitat within the Central Highlands Forest Management Area. The [2009] bushfires have materially changed the circumstances in which the existing system was planned and implemented and there is, on the evidence, an urgent need to review it' Justice Robert Osborn 2012

No Sustainability Reporting - critical to the RFA meeting conservation objectives in the Recovery Plan.

Our Submission into the Review of the RFA's in 2008 [link](#) highlights an absence of reporting data to meet the requirements of the Regional Forest Agreements to measure against ecologically sustainable objectives e.g. the CAR Reserve.

SUMMARY: STATE OF THE FORESTS REPORT (SOFR)

"THIS REPORT (SOFR) IS INTENDED TO PROVIDE THE INFORMATION NECESSARY FOR INFORMED PUBLIC DEBATE. (MINISTER FOR THE ENVIRONMENT 2003). "

Victoria's State of the Forests Report is intended to provide a snapshot in time of Victoria's forest resources. Whilst this 2003 Report aims to present baseline information related to all forest land tenures in Victoria, much of it focuses on Victoria's State forests due to limited data availability (particularly on private native forests).

The 2009 release of the 2008 Report, 5 years later, after 6 million tonnes of wood has been taken from Commonwealth land, reveals major gaps in knowledge. The chart below from the DPI show **red dots** demonstrating an absence of data or ability to report on impacts.

1.2 Species diversity				
1.2a The status of forest dependent species	●	●	●	●
1.2b Area of habitat available for forest species	●	●	●	●
1.2c Representative indicator forest species	●	●	●	●
1.2d Degree of disturbance by invasive species	●	●	●	●
1.3 Genetic diversity				
1.3a Species at risk from isolation	●	●	●	●
1.3b Conservation efforts for forest species	●	●	●	●

REQUIRED MEASURES OF SUSTAINABILITY REPORTING ARE ABSENT

Whilst the FMPs make the claim to be monitoring forestry:

By establishing a formal monitoring process based on the Montreal Criteria and indicators, NRE will become more effective in assessing trends in biodiversity and in progressing towards ecological sustainable forest management.

There is a well known gap in knowledge in monitoring and reporting in Victoria.

A major absence of data on the forest health indicators and criteria (based on the Montreal process) was raised by Leanne Wallace in her [review of the RFA's](#). The DSE, [DPI](#) and Wallace all noted the Victorian [State of the Forest Report \(SoFR\)](#) was largely absent of data with **only 13 indicators reliably measured**. The 2008 SoFR states, "The current capacity to report trends is generally poor with only 13 indicators having adequate data to fully report trends. Of the remaining indicators, 12 had partial capacity to report trends, 5 had limited capacity to report trends, and 14 had no capacity to report trends".

The Victorian Government's SoFR did reveal 23 forest dependent species are in real decline and 49 forest species have been newly added to the list. The report identifies that "information on species is poor" and that there is "no data available for analysis". In summary, indicators are showing decline in forest dependent species and where no data exists, no claims of sustainable practices and therefore sustainability should be made.

14 years of logging undertaken across the estate since the signing of the RFAs and an absence of solid knowledge of it's effects may be shown as another major breach of the RFA where a failure to comply with reporting requirements in accordance with clause 41 has occurred:

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- *Victoria will report on the results of monitoring of sustainability indicators.*

An absence of data cannot be interpreted as to produce a 'result'.

No reviewing of Forest Management Plans (FMP) - that which provides exemption of the EPBC Act

CENTRAL HIGHLANDS FOREST MANAGEMENT PLAN IS OUT OF SYNC

The [Central Highlands Forest Management Plan](#), according to the MyEnvironment vs VicForests Supreme court case judgement, defines the habitat of the endangered Leadbeater's Possum. The FMP effectively expired 4 years ago and has **never been reviewed** nor audited against its claims of sustainability in its 14 years of operations. The FMP's have failed to integrate 3 major wildfire events and a 13 year drought in Victoria. The prescriptions in the FMPs are predicated on much healthier forest thresholds from pre - 1998.

The FMP comprises an important component of the Regional Forest Agreement however un-reviewed it cannot be said that it has met the conservation aims of the RFA. The Forest Management Plan 'reflects the outcome of the (RFA) agreement'. The Commonwealth, in signing the RFA agreement, confirms that its obligations under the Endangered Species Act 1992 (later to become the EPBC Act) have been met. From the Central Highlands RFA: clause 54:

LEGISLATIVE REVIEWS ARE UNFULFILLED

The prescriptions in the FMP have never been reviewed and inaccurately reflects the Leadbeater's Possum Action Statement. The judgement, at this stage, has found that the habitat definition falls to the FMP, and the FMP is predicated on reviews to determine its efficacy as stated clearly in the FMP introduction:

An orderly process for the review and refinement of forest management strategies and zones is established in the plan. This is supposed to ensure forest management programs remain responsive to new information, community expectations and other developments in natural resource management, while maintaining resource security for the regional timber industry.

The FMP merely remain in force by default. They are 4 years out of date. Of further concern is that according to the DSE, the RFA reviews are incomplete, fourteen years after they were signed, so the State is in effect overseeing industry practices incompatible with community expectations and what science is now demonstrating.

The FMP comprises an important component of the Regional Forest Agreement however un-reviewed it cannot be said that it has met the conservation aims of the RFA. The Forest Management Plan 'reflects the outcome of the (RFA) agreement'. The Commonwealth, in signing the RFA agreement, confirms that *its* obligations under the Endangered Species Act 1992 (later to become the EPBC Act) have been met. From the Central Highlands RFA: clause 54:

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Threatened flora and fauna; the parties agree that the CAR Reserve System, actions under the Flora and Fauna Guarantee Act 1998 and the Endangered Species Protection Act 1992 and the application of a range of management strategies in the Central Highlands Forest Management Plan, provide for the protection of rare or threatened flora and fauna and ecological communities.

My Environment v VicForests has shown that clause 54 is not so. The Judge has declared that the Action Statement does not act to protect the habitat of the Leadbeater's Possum independently but defaults to the FMP. The FMP without reviews, does not fulfill it's Commonwealth obligation to integrate 'community expectations', new information and other developments' to provide for protection of listed flora and fauna.

In summary the whole protection system is in breach due to a lack of review, the absence of protection of the Action statements and a deficient CAR Reserve. This was articulated in a letter to the Federal Environment Minister and can be found on the Drop Box.

THE PROPOSED CAR RESERVE SYSTEM

Based on the results of the Comprehensive Regional Assessment report, community input through three rounds of public meetings and written comments from stakeholders, the Steering Committee developed a proposed CAR Reserve System for the Central Highlands RFA;

Adoption would add approximately 115,000 ha to the existing reserve system of 180,000 ha evaluated as part of the Deferred (Interim) Forest Assessment and bring the total area of the proposed CAR Reserve System in the region to approximately 295,000 hectares (about half of the public land in the region or 27 per cent of the entire region).

Achieving adequate levels of reservation for EVCs, represented across the full geographic range of their natural occurrence in the region, is the primary mechanism for maintaining high quality habitat for the full suite of species and current levels of genetic diversity.

Additional mechanisms are also applied to protect species, through specific strategies and prescriptions which may include the identification of quality habitat. (such as Leadbeater's 1B habitat and owl protection strategies).

Recovery Plans and/or Action Statements are examples of these additional mechanisms. They exist for a number of species and have **formed the basis** for most of the explicit species **management** guidelines in the proposed **Forest Management Plan** and Park Management Plans.

As discussed in the Central Highlands CRA report, a comprehensive strategy for the conservation of this species is provided through an approved Action Statement and a Recovery Plan which is almost complete. The objective of management as reflected in these documents, is to conserve the species over its known range.

Areas of critical habitat (Zone 1A), including virtually all of the older-aged forest in the Central Highlands, are protected in the proposed CAR Reserve System in either the Yarra Ranges National Park or in the Special Protection Zone in State forest. Timber harvesting is excluded by prescription from Zone 1B habitat (the presence of dead, mature or senescing trees, or wattle understorey) in State forest, largely comprising 1939 regrowth areas, until it

no longer provides suitable Leadbeater's Possum habitat.

Protection of threatened species in the Central Highlands has been given considerable attention and a range of detailed strategies based on the best available scientific information have been developed. Leadbeater's Possum has an approved Action Statement and a Recovery Plan is nearing completion. **All of the measures to protect the species in these documents have been developed with the assistance of relevant experts and have been incorporated into the management strategies for the Central Highlands forests.**

But if this had been the case, we would not have extinction of Victoria's most well studied marsupial.

CAR RESERVE SYSTEM IS CONTRACTING

As old growth features collapse and Zone 1B SPZ converts to GMZ, which translates as a contraction of the protected reserve for hollow-dependent wildlife. This is a contraction of the CAR reserve. The RFA claims it protects Leadbeater's habitat through zoning in the Recovery Plan and therefore Actions statements. The zones form part of the total CAR Reserve System¹⁵. The recognition that Actions Statements do not inform zoning, also means Zone 2 attributes are not protected. The FMP converts Zone 2 to GMZ automatically yet the Action Statement has an intention to protect it. In conclusion, the CAR is shrinking in its protection for wildlife dependent on wet old montane forest and therefore extinction both on and off reserve is inevitable.

CAR RESERVE SYSTEM IS INADEQUATE

Neither the FMP nor RFA can claim it has met its obligations for Leadbeater's Possum protection either as it predicates this fact on establishing, '*A comprehensive system of retained habitat for Leadbeater's Possum.*' Justice Osborn has exposed the plan's failure to meet it's obligations by stating that:

'MyEnvironment has demonstrated a strong case for the overall review of the adequacy of the reserve system intended to protect LBP habitat within the Central Highlands Forest Management Area. The [2009] bushfires have materially changed the circumstances in which the existing system was planned and implemented and there is, on the evidence, an urgent need to review it'

From this the parties may conclude that the Commonwealth claim to satisfy RFA clauses 54-58 is now untenable.

Under RFA clause 46, *Accreditation*, the Commonwealth accredits Victoria's forest management system including a process for review of the FMP and the protection provided under the FFG Act.

The accreditation is awarded to the State by the Commonwealth on the basis that the state reviews the FMPs, reserves are adequate and that the FFG Act applies. It has proved not to be so.

¹⁵ See attached media from RFA - appendix 10

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According to the **RFA guideline for reviewing management guidelines**, those changes (or reviews) may be made when:

- Changes to management system strategies for certain species or values mean that the zoning system is more or less than adequate for those values;
- New records are listed for species whose conservation targets have not been met.

The vehicle for review is made clear in the RFA agreement on page 35 of the RFA.

SUSTAINED YIELD INCLUDES LEADBEATER'S ZONE 1A

The Action Statement for Leadbeater's Possum mandates that 'Zone 1A forest should not be included in sustained sawlog and pulpwood yield calculations'. The Federal Recovery Plan goes further, 'Zone 1A forest will not be included in sustainable yield calculations'. Our court case has revealed that Zone 1A is being included in the sustainable yield calculations. All three coupes have been approved and allocated by DSE and the forecast production has been commercially allocated under the yield calculations for financial return to VicForests. This information is available in the [Court transcripts](#).

Code of Forest Practices for Timber Production - Breach

The inconsistency between the FMP and the Action Statement is a breach of the Victorian Code of Forest Practices:

Mandatory Actions - Forest Management Plans for each Forest Management Area must:

- be consistent with this Code of Practice and with all relevant Acts, agreements and policies of the Victorian Government

Code of Practice for timber production 2007, p.13

The Forest Management Plan is **not** consistent with Acts, agreements and policies - however VicForests argued in the Supreme Court that the FMP prevails, and won.

The following excerpt of the Transcript of the Court proceedings shows VicForests Legal Counsel describing some of the relevant inconsistencies, that we say, are leading to habitat logging. VicForest legal counsel describe the difference of a single tree determining whether they protect habitat or not - irrespective of the importance of it for the Leadbeater's. VicForests end on arguing why the Action statement should be subordinate to the RFA FMP. Their argument against the Action Statement prevailing is based on the revision date of the Action Statement - the FMP they claim is newer.

TRANSCRIPT: [20120220](#) - Ian Waller (VicForests)

MR WALLER: There are clearly some inconsistencies (Between the Action Statement and the FMP), for instance, looking at the numbers, at least 12 (Action Statement) are to be contrasted with the language in the FMP which is "more than

12". Despite Professor Lindenmayer regarding that as no more than a semantic difference, we say, Your Honour, there's a very big difference between 12 and 13 and that's an example where the Forest Management Plan ought to prevail. (Pg 724)

MR WALLER: Which set out a hierarchy in relation to subordinate instruments and state that where there is conflict between subordinate instruments the most recent published will prevail. We point out, Your Honour, although the Action Statement was revised in 2003, it was not revised in any substantive way and the Action Statement on its face makes that plain. The text of the Action Statement was not changed, including those important sections that we have set out in paragraphs 9 and 10 of our submission.

Justice Osborn notes in his judgement¹⁶ that VicForests contends this fact:

- (a) the Leadbeaters Possum Action Statement (LBP AS) does not impose an obligation upon it save through the mechanism of the Forest Management Plan (FMP)

This was also established in evidence by statements from the trial by VicForests' Lachlan Spencer, such as this¹⁷;

(MyEnvironment Counsel) MS WALKER: As I understand the way you read the Action Statement, you differ. You say that the way you decide whether a mixed age ash forest is to be zone 1A requires you to look at the number of hollow-bearing trees, is that right?---

(VicForests Planning Manager) SPENCER: Yes, that's correct.

MS WALKER: If South Col contains zone 1A then you wouldn't be able to log the parts that were zone 1A, would you?

SPENCER: Of course.

MS WALKER: Why didn't you look for zone 1A, Mr Spencer?

SPENCER: The accusation was that the planning had been - and we had harvested zone 1A. I looked, and as this report clearly states, Your Honour, is it likely that there is zone 1A in the coupe? From my observations there were clearly trees that I would have characterised as hollow-bearing for the purposes of determining zone 1A and that is very clear, as is described in the coupe plan approved on the TRP, that prior to harvest, when marking the coupe for harvest, that zone 1A assessment would need to be undertaken.

That assessment no doubt would take some time because of the extent of zone 1A and the purpose of this visit, I might add as I was the regional manager, was not to go in and mark the coupe for where we could log, it was to identify, is there potential zone 1A in the coupe, as suggested in the coupe plan? My observations were, yes, there was, therefore my observation what was that the planning of the

¹⁶ <http://www.myenvironment.net.au/index.php/me/Media/Files/Judgement>

¹⁷ <http://www.myenvironment.net.au/index.php/me/Work/Legal/Save-Sylvia-Supreme-Court-Case/Daily-Transcripts/Day-7-MyEnvironment-v-VicForests-Transcript-Tuesday-14-02-2012>

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coupe was completely consistent with what I had observed on the coupe, therefore accusations that our planning had been somewhat insufficient were untrue.

MS WALKER: About two-thirds of the way down the page of page 2 of 5 there's a paragraph that starts, "Zone 1A habitat contains living older trees", et cetera, and the third sentence says: "It is defined as forest that contains living hollow-bearing trees at a density of greater 12 trees per three hectares over an area greater than three hectares", is that the definition that you were applying?

SPENCER: **Obviously there is an inconsistency, Your Honour, between the Action Statement and the management plan in regards to the number of trees that apply. In the practical application, VicForests is not in a position to decide legally which one we are bound by or the other. The fact there is a contradiction is difficult for VicForests. So in the general terms, in all of our documents we refer to 12, not because that's necessarily the absolute legal binding number that we use, but in practical application we, at this point, we use 12 trees per three hectares because there is a contradiction.**

From the above transcript clearly the clash between the threatened species outcomes of the EPBC Recovery Plan and FFG Action Statement is real and is causing operational conflict between the aims of the respective Acts for the Leadbeater's recovery and the RFA FMP.

Prove they are logging habitat



An Australian National University (ANU) Monitoring site for endangered Leadbeater's Possum since 1997. It has been logged (2010) because it failed to meet the Forest Management Plan definition for habitat, if it was checked at all.

This is the CEO of JASANZ observing the logged monitoring site. There had been Leadbeater's recorded in this site consistently since 1997 in data records held by the ANU.

Australian Paper used this wood to make Reflex Paper. Heyfield Mill probably received the rest.

Is this ultimately legal in Australia?

Management of critical habitat in special supply water catchments



Fire and logging has lowered the biodiversity richness found in special water supply catchments as compared to when the RFA's were first signed. 5 out of 11 of Melbourne's catchments are open to logging. The Thomson, which holds 60% of Melbourne's drinking water has been extensively logged in the area's of highest rainfall.

Melbourne Catchment Management - thirsty catchments and young, hollow-free forests

Thomson Logging Report [link](#)

The Yarra Tributaries [link](#)

Baw Baw Report [link](#)

Murray Goulburn logging

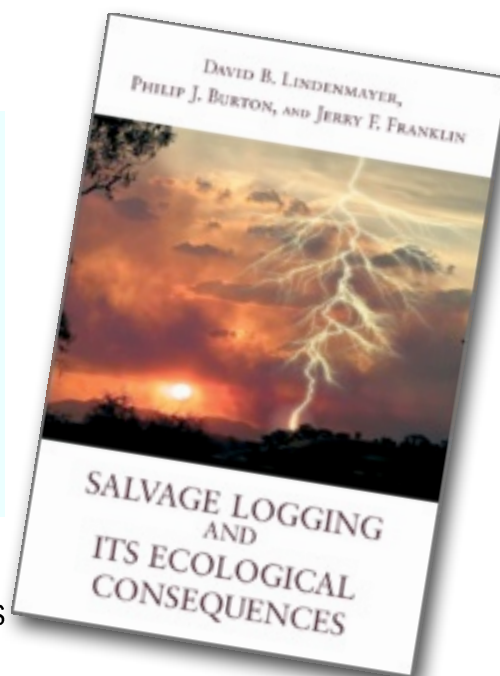
ACF Goulburn Water Report [link](#)

Goulburn Broken catchment Biodiversity report [link](#)

Goulburn Broken DSE Arthur Rylah Report [link](#)



VicForests is harvesting timber burnt in last year's bushfires, saying it benefits the local economy and promotes regeneration. But some say the practice is doing more harm than good. **Peter Ker** reports.



2009 Logging and Fires

Burned Area Emergency Reports (BAER) - The effects of Black Saturday and the 'clean up'.

BAER reports [link](#)

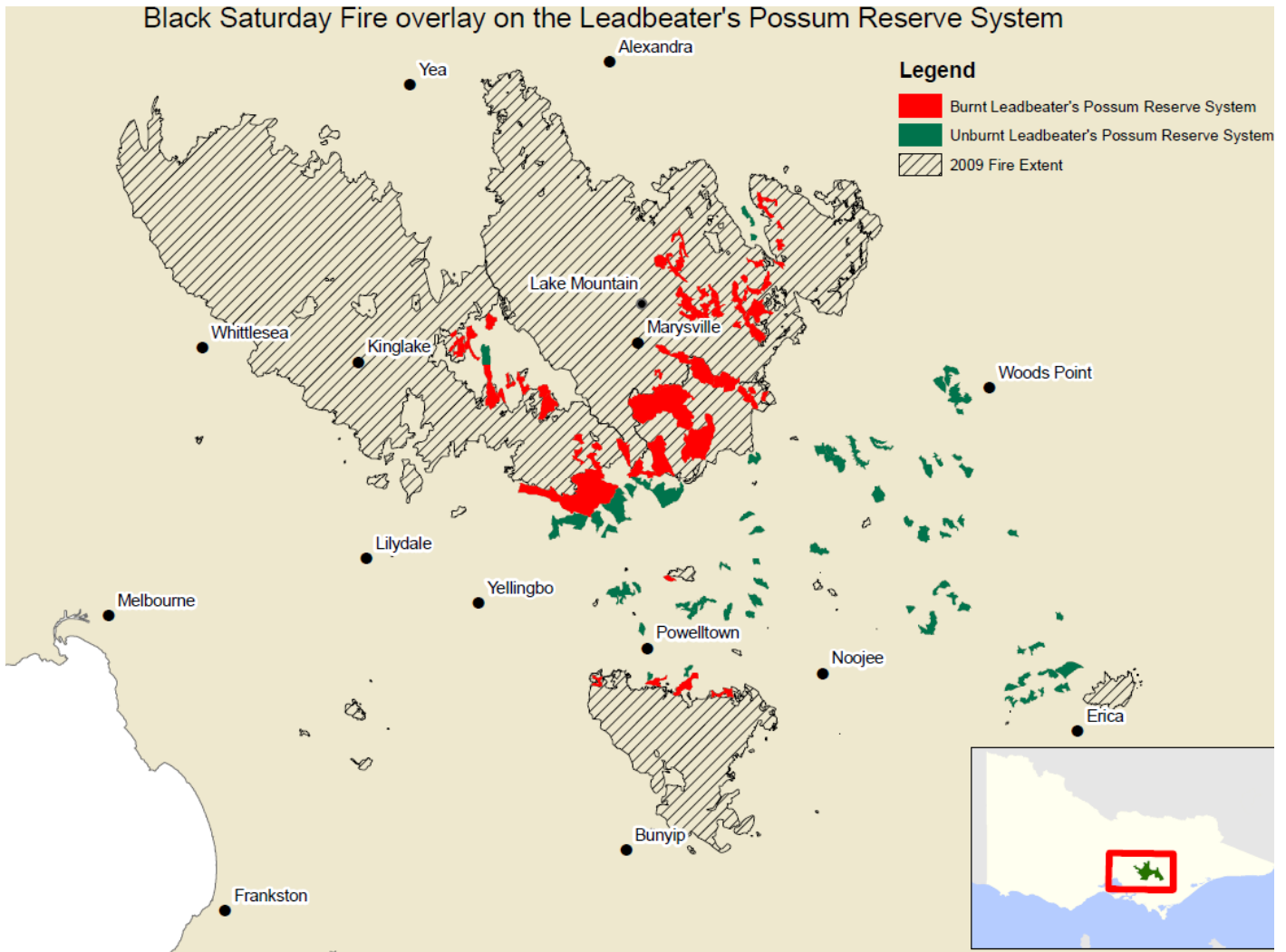
People unable to heal - As the dead are still being counted and removed from their homes and cars in the forests, the largest logging event since World War II was being initiated by Labor Treasurer John Lenders. Without a pause for consideration, Mr Lenders funds the 120 hectares coupe cuts to commence across forests still smoldering. The forests were so dry and brittle, from 13 years of drought and fires, the following summer, the machinery actually ignited tree's just by brushing past. Fires burnt in spontaneous 1-3 hectare sizes across 21 coupes. The town of Marysville, only kilometres from the coupes in 2010 (possibly more - there is a professional eyewitness source for this).

Around 4,000 hectares was logged - primarily for pulp but the logging frenzy, initiated on the 14th of February, included a 145,000 m3 export sawlog deal to China. VicForests are not permitted to export unprocessed round logs. The Wilderness Society and MyEnvironment tracked the logs to the Tottenham ship yards. We were never told whether the sale continued after VicForests were forced to suspend the contract. It was later reported by a journalist that the men who had administered that deal with the Chinese buyer, went broke over it and was being pursued by the National Australia Bank in the Supreme Court. This was never verified. The whole program was heavily subsidised in grants so the men should also have been subject a 'dumping' allegation by the World Trade Organisation.

International book published - Salvage Logging and Its Ecological Consequences - Logging advised against - Prof. Jerry Franklin and Prof. David Lindenmayer

'Landscape Traps' Global Scientific Paper - Forest Conversion to Fire Zones - based of Central Highlands fires and logging [link](#)

The anguish of massive salvage logging. The Age story 'The Money or the Tree's' [link](#)



Scientific evidence of extinction - should trigger review of forest management - none came

In 1998, the Leadbeater's Possum populations were reported at (IUCN) 5,500 in the wild. Today, experts quote between 1000 and 2000 (IUCN) in the wild and from 7 down to 5 in the recent captive collection. The FMP has issued a single, weak, protection measure for Leadbeater's in forestry in Leadbeater's Management Unit's.

The habitat itself is going extinct. The rate of stag (old tree's) collapse is expected to leave no old tree's on the landscape by 2065 (ANU) without successional planning. This will be published in Science in due course. This will put a spotlight on Australia's performance in forest and conservation management.

There is an increasing fire frequency expected consistent with climate modeling and landscape traps¹⁸ being established on the forests landscapes.

The DSE have surveyed¹⁹ 172 RFA monitoring sites that reveal species decline in every site, especially after the 2009 fires.

1% and going²⁰ [Story](#). Areas of critical habitat and much of the older-aged forest in the Central Highlands, is protected in the proposed CAR Reserve System in either the Yarra Ranges National Park or in the Special Protection Zone in State forest. The last Old Growth study was commissioned in 1996 - Study of Old Growth Forests in Victoria's Central Highlands (Forest Service Technical Report 96-3). The Report states that there is a total of 5,070 hectares of Wet Forest (ash forest) and the RFA claims this is in protection under the CAR. However, current resource summaries from ANU, DSE and Melbourne University states that in the Central Highlands there exists;

Of 31,000 hectares of Alpine Ash - 97 hectares are old growth.
Of 161,000 of hectares Mountain Ash - 1,571 hectares is old growth.

This equals 1,668 hectares of old growth Wet Forest (unlogged/unburnt ash forest) which is less than 1% of the total old growth ash forest remaining, **67% less than that claimed is protected by the CAR reserve.**

RFA Non Conformance Report 2012

Submission to Government identifying non-conformances with the RFA that includes the destruction of Recovery Plan listed habitat. Report can be found in drop box.

¹⁸ <http://www.pnas.org/content/108/38/15887.abstract>

¹⁹ <http://www.myenvironment.net.au/index.php/me/Work/Forests/DSE-Goulburn-Broken-RFA-survey>

²⁰ The Age - [Story](#)

Supreme Court Case - MyEnvironment v VicForests [link](#)

- - The community attempted to work with VicForests for 3 years regarding the logging of ecologically significant sites in light of long term monitoring reports and the Black Saturday Bushfires.
- - VicForests ignore community concerns over a protracted period. Ombudsman rules that VicForests are not responding and must.
- - VicForests and DSE warned by Recovery Team leader DSE Bram Mason that due to fires Toolangi's green forest area's are 'critical for the recovery of Leadbeater's Possum' - 'Document 36' Drop Box
- - People are arrested everyday for 7 weeks whilst ecological surveys were attempted as VicForests logged. Police use dogs on community opposition [link](#)
- - Court case ensues when logging machinery cuts habitat - no other options available.
- - Injunction
- - Details of the case - [link](#)

According to the RFA Directions Report

The Flora and Fauna Guarantee Act 1988 includes provisions for the protection of habitat that has been identified as being critical to the survival of any species. (page 31)

Our court case proved that this is not the case.

Letter to Minister Walsh from the Law Institute Victoria - Leadbeater's Possum

<https://www.liv.asn.au/PDF/LIV-Young-Lawyers/LatestNews/Submission-to-Hon-Peter-Walsh-MP>

Victorian Auditor General's Office finds environmental regulators 'woeful'

DSE DPI 'woefully inadequate' regulators - [report link](#)

Age Story - 'Watch Dog fails on eco threats' [Link](#)

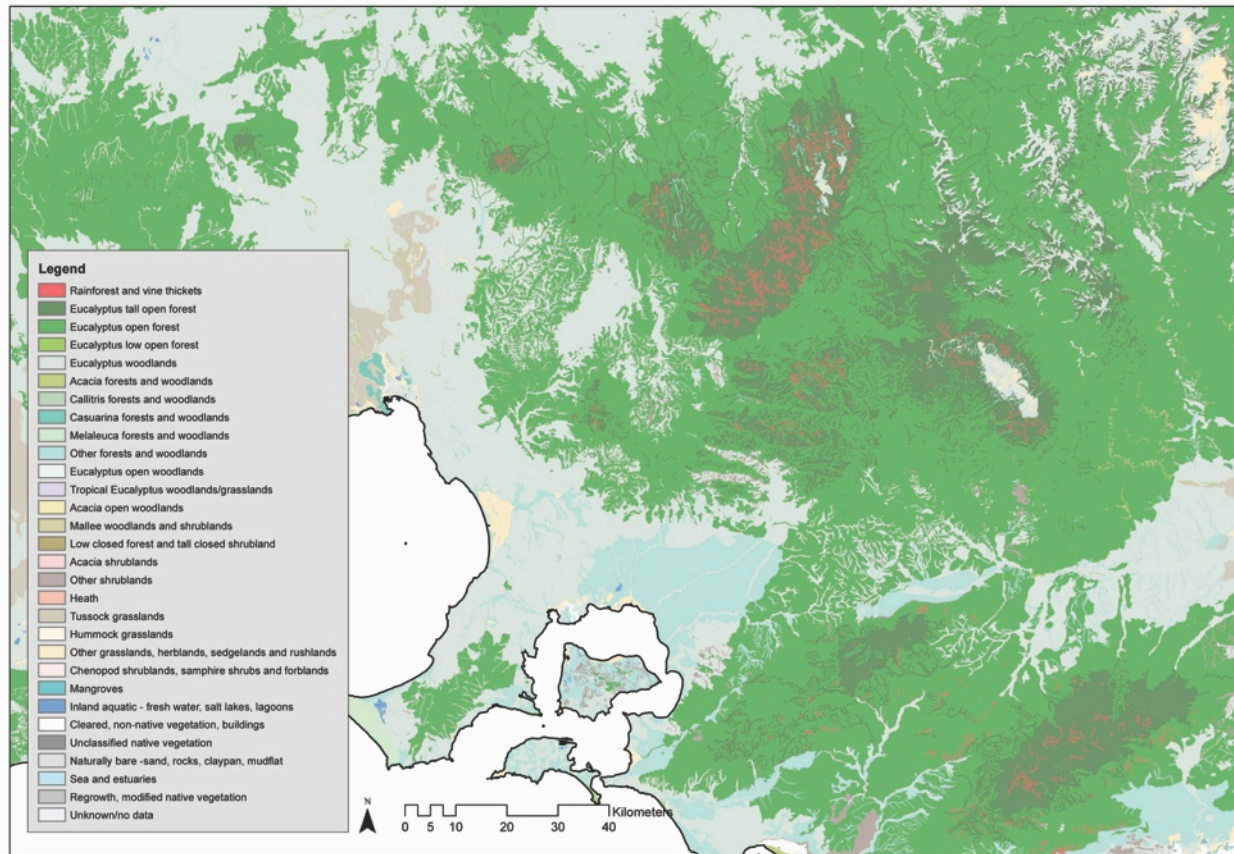
Conclusion: The RFA - a failed attempt at an EPBC Act exclusion

Successive Commonwealth governments have failed to meet the 1998 Commonwealth objectives of the FFG Act and EPBC Act; **To downlist Leadbeater's Possum from endangered to vulnerable within 10 years based on the IUCN (1994) criteria of population trend and size, extent of occurrence, probability of extinction, and the management of habitat towards a target of no more than a 1% probability of extinction over 250 years throughout the forest within its current range.** It has failed. Today there are 1000 - 2000(IUCN) remaining in the wild.

Ultimately it can be concluded that this major error in risk management is because the departments managing our 'at risk' species have been shown to be failing in risk management according to Auditor General's office . The fires should have triggered a review when 42% of LbP habitat had been lost to wildfire. Only one LbP has been recorded in burnt forests across 170 monitoring sites (ANU 2012). **The state has had three years to act and now, what is left, is in critical need of protection.**

The Great Forests of the Central Highlands - Victoria

Disturbance layers: Map 1 - Pre- 1975 Vegetation



Map 2 - Today with fire and forestry logging coupes.

