ENVIRONMENT

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A bid to hold the Victorian government to account for 'loophole logging' – which activists claim is destroying old-growth habitat for endangered mammals – has failed.

By Katharine Wilson

# Court backs Victoria's 'loophole logging'



A greater glider. CREDIT: STEPHANIE JACKSON / ALAMY

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CONTENTS

On an autumn morning in 2014, wildlife surveyor Blake Nesbit found the still-warm body of a glider flattened within logging machine tread tracks on the forest floor at Yarra Ranges National Park. He called Jordan Crook, vice-president of Wildlife of the Central Highlands.

"I felt sickened," Crook tells *The Saturday Paper*. "Blake was crying. He said: 'They killed a glider.' It was in one of the trees we'd told them [the government] about. This was just one critter we knew about."

Protected under federal law, the greater glider had been uplisted from "vulnerable" to "endangered", with remaining numbers unknown. Allegedly killed by a twig machine, the glider became pivotal to Warburton Environment Inc v VicFCA, or the "Hollows case", a Federal Court test case against "loophole logging" by Victoria's Department of Energy, Environment and Climate Action.

After years of litigation with mixed results, optimism was high on Thursday in a courtroom overflowing with conservationists. That is, until Justice Christopher Horan dismissed all claims. "It was not established that there were significant impacts on the greater glider or Leadbeater's possum," he said, and there was "insufficient basis" to conclude significant impacts in future.

The ruling coincides with breaking news that Victoria's lowland Leadbeater's possum has been declared "extinct in the wild" due to forestry and invasive species mismanagement. It's an expert classification rejected by the government.

The implications of Thursday's outcome are yet to be fully analysed, Warburton Environment president Nic Fox said outside court, but forest groups will "keep fighting".

"It's been such a hard campaign," she tells *The Saturday Paper*. "How do you fight a case against something that the government claims doesn't exist?"

Fox is referring to state government claims that "loophole logging" doesn't exist. She says a Hollows case argument was that Forest Fire Management Victoria's (FFMVic) "sudden increase" in removal of habitat trees "does not correspond with a sudden increase in the severity of the harvest [they saw]". But "alert correspondent with a sudden increase in funding for tree removal contractors previously retained by VicForests [Victoria's defunct logging company]".

The litigation sought to compel FFMVic to heed the *Environment Protection and Biodiversity Conservation (EPBC) Act*, which was designed to protect species on the pathway to extinction. Evidence mostly centred around more than 800 towering, hollow-bearing trees that Wurundjeri custodian Stacie Piper calls "our Indian dairying, our grandmother trees, our ancient ones".

Recognised as essential keystone species, without which ecosystem function would collapse, the trees measured up to 1.8h metres wide. Centuries old, they safeguarded the rainforest "long before colonisation", Piper tells *The Saturday Paper*.

In early 2014, DEECA staff spray-painted them with pink circles and perpendicular "slash lines", marking them for felling.

By then, logging had officially ended, but former VicForests staff were absorbed into FFMVic, which maintained that continued felling was necessary for "forest management" and "community safety". VicForests had scheduled roughly 4,000 hectares annually for logging until 2030. FFMVic would take over 1,000 hectares annually until 2024, with considerable slowness of drawings, some up to 40 metres wide, for "fuel breaks".

Even after successful lawsuits against VicForests, FFMVic felling proved impossible to legally challenge. It was not bound by the "already weak" state laws governing VicForests, explains Fox. FFMVic could delineate national parks "with impunity". Proposing federal laws with "community safety" pretexts, "we made FFMVic accountable to the Office of the Conservation Regulator."

> *"State and federal governments are failing threatened species. Without community groups documenting this destruction and challenging it in court, who is holding the state government to account?"*

This makes the Hollows ruling a blow for citizen scientists who have rallied against logging across the state, including the successful campaign led across the state by Australian Forests to Central Victoria, to the Grampians National Park near Dunkeld, in Mount Bute Run and the Dandenong Ranges, in Wombat-Lerderderg National Park in the central north, and in Croajingolong National Park in far eastern Victoria.

In the Hollows case, giant trees had formed hollows occupied by rare mammals – greater glider, sooky mouse and Leadbeater's possum among them. These hollows take hundreds of years to form, so replanting trees will leave animals "homeless, with a housing crisis", explains Fox. Cool temperate rainforest covers less than 0.1 per cent of Victoria, and old trees are these mammals' only chance for survival.

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By Katherine Wilson

Months before their case was filed, ecologists, surveyors, Wurundjeri custodians and DEECA's own advisers submitted reports to ministers and FFMVic alongside peer-reviewed findings that old, cool temperate rainforests are themselves natural firebreaks and that FFMVic's clearing itself increases bushfire risk. Some joined Wildlife of the Central Highlands in "ground-truthing" – walking the coupes with chainsaws, identifying hollow bears, diameters and up to 40 metres wide for "fuel breaks".

These filled colossal court books but, the court heard, none of this evidence was heeded by FFMVic, which filled up to 1000 hollow-bearing and "recruitment trees" – trees that are developing hollows. FFMVic did not challenge the court-book data.

"Independent arborist assessments found the trees were low risk," said Crook, himself a qualified arborist. A second expert witness arborist "found none of the trees he assessed needed to be cut down", said Fox. Motivations for the felling, conservationists believe, remain industrial.

Since VicForests' closure, the government introduced the State Forest By-Products Framework, allowing DEECA to sell logs. Conservationists say this is "loophole logging", which the government denies. In September, Animal Justice Party MP Georgie Purcell moved a motion for "transparency and oversight" in forest operations, telling parliament, "The evidence does not support the state's claims that logging was necessary to reduce fire hazard."

Her motion stated: "Community groups and scientists raising concerns have been met with non-engagement and forced to pursue costly court action as the only available accountability mechanism."

Labor MP Ryan Batchelor insisted Purcell's motion was "misleading" because "commercial native timber harvesting ended in Victoria in 2014". He said logging "does not happen in Victoria" and logs were a mere "byproduct" of bad breaks.

The Hollows case follows a succession of legal interventions challenging this. Forensic accounting commissioned by Environmental Justice Australia using documents extracted under freedom of information found "native forest logs still moving through Victorian supply chains". The audit found that "DEECA's claims to have ended native forest logging 'before the outcomes promised' and it raised "serious questions" about "how such vast amounts of public money were used". Much remains unaccounted for, with "discrepancies and significant gaps in transparency".

Some of these gaps were already revealed in *Warburton Environment Inc v VicForests* (2022). A DEECA official admitted records had "not been maintained" about logged fuel breaks, nor had the clearing of these breaks been "formally recorded" and "the full number" of them "is still unknown".

In his Hollows case affidavit, FFMVic chief fire officer Chris Hardiman allowed that some fuel break records remain "not as accurate, consolidated or complete" as others. Under cross-examination by barrister Jonathan Kirman, who repeatedly asked whether FFMVic knows how many hollow-bearing trees have been felled, "I don't know", "I don't have that data", Hardiman responded, "I can't tell you the number. ... I don't know whether any other individuals know how many. ... I don't know the numbers." Asked why he hadn't briefed DEECA's advice to consult the *EPBC Act*, he replied, "Just removing a small number of hazardous trees ... wouldn't have triggered a thought that it would have a significant impact."

By contrast, citizen surveyors recorded precise numbers and impacts. "It's been an extraordinary community effort to challenge the destruction of homes for endangered wildlife and hold the government to account," says Fox. Community groups were "forced to take legal action to stop the government killing endangered wildlife".

"Today's decision shows why we urgently need stronger laws to protect threatened wildlife and the forests they live in and depend on. State and federal governments are failing threatened species. Without community groups documenting this destruction and challenging it in court, who is holding the state government to account?"

The case coincided with several peer-reviewed studies finding forest fuel breaks create wind tunnels, dry forests and increase flammability. Several detailed questions were put to the state government, but a media staffer noted he "limited" capacity to respond while in caretaker mode ahead of the November 28 election.

The recent Improved Native Forest Management carbon credit method, a federal regulation that makes native logging unviable, hasn't been applied in Victoria because the state claims to have ended logging. Victoria is currently negotiating a federal agreement to conduct its own EPBC assessments – a proposal conservationists characterise as "FFMVic marking its own homework".

Fox says Thursday's ruling "raised serious questions" about the effectiveness of nature laws and "the same agency being responsible for delivery, assessment, compliance and assurance".

"It's the fox guarding the henhouse."

Katharine Wilson is a journalist and author.

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