



## South East Region Conservation Alliance Inc.

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Hon Sussan Ley  
Minister of the Environment  
Parliament House  
Canberra ACT 2600

Dear Minister

South East Region Conservation Alliance (SERCA) represents environment groups on the South Coast of NSW. In this region, 80 percent of native forest available for logging was burnt in the recent summer bushfires.

This is a critical time to ensure the recovery of the forests and the wildlife they support.

Against this background we are writing to you regarding the consequences of the recent decision made by the Federal Court on 27 May 2020 in *Friends of Leadbeater's Possum Inc v VicForests* (No 4) [2020] FCA 704.

The judgement has important implications for Regional Forest Agreements in all States, both as to the regulation of forestry under the EPBC Act and the operation of section 38, and also in relation to operation of other alternative mechanisms to impact assessment and approval regimes in Part 3 and Part 9 of the Act.

- The court decision confirms that Regional Forest Agreements (RFAs) have failed to secure the conservation outcomes that form the rationale for the “exemption” for forestry operations contained in section 38 of the EPBC Act and that the EPBC Act has failed to provide a suitable legal framework to address this failure. This is despite long standing recognition of these problems with RFAs and the exemption, including recognition in the first 10-year review of the EPBC Act. The exemption should be removed.
- Further, the case clearly demonstrates the problems that arise when the Commonwealth seeks to achieve the conservation objectives of the EPBC Act by relying on a supposedly equivalent arrangement without adequate oversight including monitoring, evaluation, review and improvement phases. No matter how effective tools such as agreements, standards, endorsed plans or accredited assessments may be at the design stage, the true test is implementation which requires credible accountability mechanisms including effective governance arrangements.

Neither the Commonwealth nor the NSW Government has ever attempted to determine whether protection under NSW logging rules is, in fact, equivalent.

Significantly Justice Mortimer’s analysis of the evidence in the case about the impacts of logging on the Greater Glider and Leadbeater's Possum led her to find not only that the logging breached

Victorian laws and the EPBC Act, but also that even if the logging complied with the Victorian regulations accredited under the Central Highlands RFA, logging would continue to contribute to the decline of the Greater Glider and Leadbeater's Possum.

These circumstances could also be seen as commonplace in the Southern and Eden RFA Regions.

The court's findings in the case demonstrate a systemic failure to adequately provide for or actually protect threatened species listed under the EPBC Act.

None of these failings should come as a surprise. These problems were all identified in the first 10 year review of the EPBC Act, which stated:

“like other activities assessed and approved under the Act, RFAs should be regularly monitored and audited to ensure they continue to meet the agreed conditions of that approval. The weakness in this area needs to be rectified.”

While the Friends of Leadbeater's Possum case deals with the particular circumstances of two EPBC listed threatened species in the context of the Central Highlands RFA, it sounds a caution more broadly in relation to any proposal which, like the RFA system, sees the Commonwealth stepping back from taking direct regulatory responsibility for impacts on matters of national environmental significance under the Act.

In addition to the matters outlined above, we note too that the case demonstrates the value of the rights the EPBC Act affords to third parties such as the Friends of Leadbeater's Possum, in this case, to facilitate enforcing the Act, particular issue in NSW where third party standing for legal challenges is severely constrained by S. 69ZA of the NSW Forestry Act.

This case demonstrates the importance of community access to justice provisions in our national environment laws and the need to strengthen these. The availability of these rights plays a critical role in keeping governments accountable for meeting legislative obligations under the Act and is in the national interest.

As a result of this case, we urge you to ensure a more proactive role from the Commonwealth in ensuring the survival of forest dwelling wildlife and their habitat.

Yours sincerely

Harriett Swift

Deputy Convener