

IN THE SUPREME COURT OF VICTORIA
AT SALE
COMMON LAW DIVISION

No. 8547 of 2009

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

AFFIDAVIT OF JONATHAN ALAN KRAMERSH

Date Sworn: 14 March 2010

Filed on behalf of the Defendant

**HWL Ebsworth Lawyers as agent for Komesaroff
Legal Pty Ltd**

Level 21, 570 Bourke Street
Melbourne VIC 3000

Email: jonathan.kramersh@hwlebsworth.com.au

Solicitor Code: 179

DX: 564, Melbourne

Tel: (03) 8633 7500

Fax: 1300 365 323

Ref: JAK:RVH:AK:182227

I, **JONATHAN ALAN KRAMERSH** of Level 21, 570 Bourke Street, Melbourne in the State of Victoria, Solicitor, make oath and say as follows:

1. I am a partner of the firm of HWL Ebsworth Lawyers and I have the care and conduct of this action on behalf of the Defendant. I am authorised to swear this affidavit on behalf of the Defendant. I make this affidavit from my own knowledge, except where otherwise stated. Where I depose to matters from information and belief, I believe those matters to be true.
2. On 29 September 2009 Justice Forrest relevantly ordered that on or before 27 November 2009, the Defendant file and serve any further affidavits (excluding expert reports and in addition to those already filed) on which it intends to rely at trial.
3. On 23 October 2009 Justice Osborn relevantly ordered that on or before 29 January 2010 the Defendant file and serve any expert reports on which its intends to rely at trial.
4. Shortly after the orders were made by Justice Osborn I requested Dr David Pollard, Chief Executive Officer of VicForests, to put in place arrangements with the Department of



Sustainability and Environment (**DSE**) to source documents relevant to this proceeding and to expedite our request in order to enable VicForests to comply with those orders.

5. On 10 November 2009 a bundle of documents from DSE was received by Rebecca Howe, of my office. Following a review of the documents it appeared to me that the documents did not contain internal memoranda and emails relevant to the subject matter of this proceeding. I asked Rebecca Howe to meet with representatives from the DSE for the purpose of obtaining extra documents. On or about 12 November 2009 Rebecca Howe told me, and I believe that she had spoken that day with Lee Miezi, Director Forests, Forests and Parks Division, at DSE, and that Lee Miezi told her *"if you want those documents you'll have to serve a subpoena."*
6. On 13 November 2009, I caused the Secretary to the DSE to be served with a subpoena *duces tecum*. For convenience I note the schedule to the subpoena provides:

"The documents and things you must produce are as follows:

1. *Any document that records or evidences the process undertaken by the Department of Sustainability and Environment (**Department**) between the period June 2004 and June 2009 in relation to the:*
 - (a) *approval of coupes 840-502-0015 and 840-502-0019 for inclusion in the Timber Release Plan dated 5 July 2007; and*
 - (b) *approval of coupes 840-502-0026 and 840-502-0027 for inclusion in the Timber Release Plan dated 5 June 2009.*
2. *All correspondence, internal communications, file notes, memoranda or documents within the Department in the period June 2004 to present relating to coupes 840-502-0015, 840-502-0019, 840-502-0026 or 840-502-0027 (**Brown Mountain Forestry Coupes**).*
3. *All correspondence between the Department and:*
 - (a) *Environment East Gippsland, Inc (**EEG**);*
 - (b) *Jill Redwood;*
 - (c) *Andrew Stephen Lincoln;*
 - (d) *any volunteer of EEG; and*



(e) *VicForests*;

during the period June 2004 to present concerning or relating to the Brown Mountain Forestry Coupes.

4. *All correspondence, file notes, memoranda or documents in the period June 2008 to present related to the presence of the:*

(a) *Long-Footed Potoroo*;

(b) *Spot-Tailed Quoll*;

(c) *Large Brown Tree Frog*;

(d) *Sooty Owl and Powerful Owl*;

(e) *Orbost Spiny Crayfish*; and

(f) *Arboreal Mammals*,

within the Brown Mountain Forestry Coupes."

7. The date for production of the documents specified in the schedule to the subpoena was 20 November 2009.
8. Prior to 17 November 2009 Cameron MacDonald told me that he had arranged a meeting with the DSE. The meeting was held at DSE's office at 8 Nicholson Street, East Melbourne, on 17 November 2009 with Kirsty Douglas, General Counsel to DSE and Chris Stafford, Manager Legal Advice Unit at DSE, Lee Miezis and Kimberley Dripps, Executive Director Biodiversity and Ecosystem Services. I did not attend the meeting however Cameron MacDonald, Rebecca Howe and Hamish Redd, junior counsel retained by the Defendant, were in attendance at the meeting.
9. Following the meeting, Cameron MacDonald told me that he was concerned about the level of cooperation the DSE might provide to VicForests in relation to this proceeding.
10. On 19 November 2009, I settled a letter for VicForests to send to Dr Peter Appleford, Executive Director, Forests and Parks Division, at DSE. I have since been provided with a signed version of the letter I settled. Now produced and shown to me and marked "JAK-1" is a true copy of the signed version of the letter I settled dated 19 November 2009 as signed by Dr David Pollard. For convenience, I note the letter provides:



"As you know, VicForests is the defendant to proceedings commenced in the Supreme Court of Victoria by Environment East Gippsland, Inc (EEG). EEG's Statement of Claim was filed on 28 September 2009. The Statement of Claim includes allegations regarding the process of VicForests and the Department of Sustainability and Environment (Department). On 12 October 2009, VicForests filed its defence. The trial is listed for hearing in the first two weeks of March 2010.

A substantive issue for determination is the actual or likely presence of certain threatened and endangered species in the Brown Mountain area, and whether the presence of those species, the proposed arrangements concerning the harvesting are in breach of the relevant action statements. These species are:

- Orbost Spiny Crayfish;*
- Long-footed Potoroo;*
- Spot Tailed Quoll;*
- Sooty Owl and Powerful Owl; and*
- Large Brown Tree Frog (together, **Threatened Species**).*

In accordance with the timetable set by the Court, VicForests has been ordered to file and serve its expert reports on or before 29 January 2010. To that end, we request your assistance to permit us access to Natasha McLean, who we understand has expertise in respect of the Threatened Species.

Subject to your approval and our meeting with her, we propose to provide Ms McLean with a brief to provide an expert report in accordance with the Experts Code of Conduct.

We anticipate that her involvement would include initially attending a meeting with our legal team comprising solicitors and counsel with a view to obtaining reports from her about her area(s) of expertise. Given the expedited timetable, we request that this meeting occur as soon as possible, subject to her availability.

If the report prepared by Ms McLean is relied upon, in addition, we request that she be made available for the trial in Sale, Victoria, during the first two weeks of March 2010."

11. For the sake of completeness I note that Natasha McLean is the Manager of Threatened Species, Biodiversity and Ecosystems Services Division, at DSE.



12. On 19 November 2009 I was informed by Rebecca Howe and believe that Chris Stafford had sought an extension of time to comply with the subpoena *duces tecum* to the Secretary to the DSE. Later that day I sent a letter to Chris Stafford confirming an extension of time for compliance with this subpoena until 30 November 2009.
13. On 20 November 2009, at approximately 5.45 pm, I received a letter by email from Chris Stafford. For convenience I note the letter provides:

"I refer to your letter dated 19 November 2009.

By letter from David Pollard dated 11 November 2009, a request was made for access to DSE personnel who have expertise in respect of nominated species. The Department met with you on 17 November 2009. At that meeting the nature of the case, the proposed defence and the ability for the Department to assist was discussed at length. At the meeting it was clearly indicated that the Department would consider the request that it provide witnesses, whether expert or lay.

The Department has further considered your request and I advise that it does not agree that any of its staff should act as expert witnesses. Public servants are subject to the Code of Conduct for Victorian Public Sector Employees. Paragraph 3.5 makes provision for public comment:

'Public sector employees only make public comment when specifically authorised to do so in relation to their duties, a public sector body, or government policies and programs. Such comment is restricted to factual information and avoids the expression of personal opinion. Public comment includes providing information or comment to any media (electronic or print), the internet and speaking engagements. When making a comment in a private capacity, public sector employees ensure their comments are not related to any government activity that they are involved in or connected with as public sector employees and make it clear they are expressing their own view. They ensure personal comments do not compromise their capacity to perform their public sector role in an unbiased manner, and that their comments are not seen or perceived to be an official comment.'

It will be clear to you that any comment made by staff to which VicForests refers would relate directly to their activity in which they are involved as public servants.

The Department has already agreed that Lee Miezis will be available to act as a lay witness in this case to offer evidence of the process for authorisation of timber harvesting activities by VicForests.

I note your advice of extension of the date for satisfying the subpoena to 30 November 2009."

Now produced and shown to me and marked "JAK-2" is a true copy of the letter I received by email from Chris Stafford at approximately 5.45 pm on 20 November 2009.

14. On 25 November 2009 Kirsty Douglas told me that the DSE was content to allow Lee Miezis to give evidence as a lay witness in relation to the factual background and that a "subpoena would assist the DSE".
15. On 26 November 2009, Lee Miezis was served with a subpoena to give evidence at the trial of this proceeding.
16. I had a number of telephone discussions during this period and subsequent with Dr Peter Appleford to facilitate VicForests' request to meet with DSE's personnel.
17. On or about 1 December 2009, I settled a letter for Dr David Pollard to send to Dr Peter Appleford regarding a proposed meeting with Natasha McLean, of the DSE. Now produced and shown to me and marked "JAK-3" is a true copy of the letter I settled, as signed by Dr David Pollard to Dr Peter Appleford. For convenience I note the letter provides:

"As you know, VicForests is the defendant to proceedings commenced in the Supreme Court of Victoria by Environment East Gippsland, Inc (EEG). EEG's Statement of Claim was filed on 28 October 2009. The Statement of Claim includes allegations regarding the processes of VicForests and the Department of Sustainability and Environment (Department). On 12 October 2009, VicForests filed its defence. The trial is listed for hearing in the first two weeks of March 2010.

A substantive issue for determination is the actual or likely presence of certain threatened and endangered species in the Brown Mountain area and whether, assuming the presence of the species, the proposed arrangements concerning the harvesting are in breach of the relevant action statements. The species are:

- *Orbost Spiny Crayfish;*
- *Long-footed Potoroo;*
- *Spot Tailed Quoll;*



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- Sooty Owl and Powerful Owl; and
- Large Brown Tree Frog (together, **Threatened Species**).

In accordance with the timetable set by the Court, VicForests has been ordered to file and serve its expert reports on or before 29 January 2010. To that end, we request your assistance to permit us access to Natasha McLean who we understand has expertise in respect of the Threatened Species.

Subject to your approval and our meeting with her, we propose to provide Ms McLean with a brief to provide an expert report in accordance with the Experts Code of Conduct.

We anticipate that her involvement would include initially attending a meeting with our legal team comprising solicitors and counsel. Given the expedited timetable, we request that this meeting occur as soon as possible, subject to her availability.

If the report prepared by Ms McLean is relied upon then, in addition, we request that she be made available.”

18. I am informed by Rebecca Howe and verily believe that on 4 December 2009 she attended a meeting at the DSE's office in East Melbourne. Present at the meeting were Natasha McLean, Chris Stafford and Hamish Redd. I am informed by Rebecca Howe and verily believe that she terminated the meeting on 4 December 2009 because Chris Stafford objected to the questions put to Natasha McLean as he regarded the questions as descending into matters of opinion.
19. On a date unknown to me but prior to 9 December 2009 the DSE engaged Jason Rosen, Solicitor, Litigation Branch, at the Victorian Government Solicitors Office (**VGSO**) to act on its behalf in relation to the request by VicForests to make DSE's personnel available. On 11 December 2009 I attended a meeting with Natasha McLean held at the chambers of senior counsel retained by the Defendant, Ian Waller SC. Present at the meeting were Ian Waller SC, Hamish Redd, Dr Peter Appleford, Chris Stafford and Jason Rosen.
20. With the assistance of Dr Peter Appleford a meeting was arranged to occur on 18 January 2010 together with Jason Rosen, Chris Stafford and two employees of the Arthur Rylah Institute (**ARI**), Richard Loyn and Ryan Chick. ARI is the research arm of the DSE.
21. Now produced and shown to me and marked "JAK-4" is a true copy of a chain of email correspondence between myself and Dr Peter Appleford between 18 December 2009 and 23 December 2009. For convenience I set out the contents of that email correspondence below:



Rebecca Howe 7

Friday, 18 December 2009, 11.30 am

Dr Peter Appleford to Jonathan Kramersh, copied to Rebecca Howe

"Thanks for the email and the questions.

The questions have been noted. As drafted some questions may verge on requesting opinion, but I am confident this can be worked through in any meeting(s).

In regard to your request to arrange meetings I note the following:

- 1. Richard Loyn (Sooty Owl and Powerful Owl), Ryan Chick (Long-footed Potoroo), Jenny Nelson (Spot-tailed Quoll) – DSE is presently discussing with these witnesses the nature of the litigation and the nature of the request from VicForests (including indicative questions) to ascertain there [sic] further engagement in the process.*
- 2. Andrew Murray (Orbost Spiny Crayfish) – based in Orbost and due to work commitments (in particular fire) Nick [sic] is not available at present.*
- 3. Nick Clemann (Large Brown Tree Frog) – as VicForests have access to an external expert witness we will address engagement with Nick after resolving the three staff at 1."*

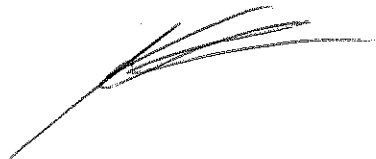
Friday, 18 December 2009, at 11.49 am

Jonathan Kramersh to Dr Peter Appleford, copied to Rebecca Howe

"Peter,

Thank you, I share your confidence that we can work through the issues in any of the proposed meetings.

- 1. I also look forward to hearing from you regarding the outcome of the discussions between the DSE and the potential witnesses referred to in paragraph 1 of your email.*
- 2. If at all possible we would appreciate if you could indicate when Andrew Murray may have some availability in the near foreseeable future.*
- 3. We are content to proceed with the arrangements with Nick Clemann as you suggest but we would like him to review and comment upon the plaintiff's (EEG) 'frog' expert*



report when it is completed in the next few days. Can you indicate whether this is acceptable to the DSE and Nick.

Tuesday, 22 December 2009, 10.14 am

Dr Peter Appleford to Jonathan Kramersh, copied to Rebecca Howe

"Sorry for the delay in providing update [sic] I was out in the regions yesterday.

Further to my email of the 18 December [sic], please note the following update.

As indicated the Department has contacted the staff request [sic] to determine their (a) suitability to provide the information requested (b) their preparedness to act as a witness. (Note: the Department will not compel staff to be witnesses).

- Ryan Chick (Long-footed Potoroo) – Ryan does not appear to have the detailed knowledge on the survey history, species distribution not location of suitable habitat for this species in East Gippsland (particularly the Brown Mountain area) to provide the factual information requested. The Department is considering alternative witnesses in this area. Possible alternative witnesses are located in the Orbost Office. The possibility of any discussion in the short term is low.*
- Jenny Nelson (Spot-tailed Quoll) – Jenny has declined to be involved in the process. The Department does not have an alternative option in regard to the spot-tailed quoll.*
- Richard Loyn (Sooty/Powerful Owl) – discussion with Richard are continuing [sic].*

In regard to Andy Murray I will follow his availability."

Tuesday, 22 December 2009, 5.51 pm

Jonathan Kramersh to Dr Peter Appleford, copied to Rebecca Howe

"I endeavoured to contact you today to discuss the contents of your email today.

Let me know if you have some time to meet with me tomorrow to discuss.

I look forward to hearing from you."

Wednesday, 23 December 2009, 5.04 pm

Dr Peter Appleford to Jonathan Kramersh, Simone Diamantopolous, copied to Rebecca Howe



"Appears that Ryan Chick and Richard Loyn will be available for initial discussion.

Simon Diamantopolous will be contacting yourself or Rebecca to organise discussions prior to 8 January if possible."

22. On 15 January 2010, at approximately 12.40 pm, I received an email from Jason Rosen. The letter contained an attachment. For convenience I set out the contents of the letter and attachment below:

Letter

"We refer to conferences between VicForests' lawyers and DSE employees that are proposed for 18 January 2010."

We understand that you were involved in discussions with Peter Appleford in December 2009 to the effect that the conference would proceed on the basis that VicForests would not subpoena or otherwise seek to adduce evidence from any DSE employees without first obtaining the consent of the DSE. The most appropriate arrangement for any such agreement would be in the form of an undertaking.

Accordingly, we attach a form of undertaking for your consideration. If you agree to its form, could you please sign it on behalf of VicForests and return it to this office by close of business today."

Attachment

"Undertaking

The Defendant undertakes to the Department of Sustainability and Environment (DSE) that it will not issue any subpoena in relation to any DSE employee, serve any expert witness statement in relation to any DSE employee under Order 44 of the Supreme Court (General Civil Procedure) Rules 2005, or otherwise seek to adduce any evidence from any DSE employee, without first obtaining permission in writing from the proposed witness and from Peter Appleford, Executive Director Forests and Parks, DSE."

Now produced and shown to me and marked "JAK-5" is a true copy of the email and attachment I received from Jason Rosen on 15 January 2010 at approximately 12.40pm.

23. I was on annual leave during the week commencing Monday, 11 January 2010 until Monday, 18 January 2010.



24. On 18 January 2010 I had a discussion with Dr Peter Appleford during which I asked Dr Peter Appleford whether it was possible for VicForests' legal advisers to meet with Dr Stephen Henry and Andrew Murray.
25. Dr Peter Appleford was on annual leave for a few weeks in early January 2010 and it was my understanding that my request to meet with Stephen Henry and Andrew Murray was referred to Jason Rosen and Chris Stafford.
26. On 28 January 2010, at approximately 12.50 pm, I was carbon copied into an email from Rebecca Howe to Jason Rosen. The email attached a letter and a further attachment I settled. For convenience I note the contents of the letter and attachment:

Letter

"We refer to your letter of 15 January 2010 and to the undertaking enclosed with that letter.

*We have obtained instructions from our client regarding the form of the undertaking. We are instructed to give the undertaking on behalf of our client in the form **attached**. If you agree to its form, please let us know and we will sign an arrange for it to be sent to your office in order to expedite the further meetings with Richard Loyn, Ryan Chick, Stephen Henry and Andrew Murray as previously discussed with you on 18 January 2010, and prior to that, with Dr Peter Appleford.*

We trust the revised form of undertaking assuages the concerns raised by you and Mr Chris Stafford of the Department of Sustainability and Environment in your correspondence with Rebecca Howe of this office on 15 January 2010."

Attachment

"The Defendant undertakes to the Department of Sustainability and Environment (DSE) that it will not issue any subpoena in relation to any DSE employee to give expert opinion in Proceeding No 8547 of 2009 between Environment East Gippsland Inc and VicForests whether under Order 44 of the Supreme Court (General Civil Procedure) Rules 2005 or otherwise, without first obtaining permission in writing from the proposed witness and from Peter Appleford, Executive Director Forests and Parks, DSE."

Now produced and shown to me and marked "JAK-6" is a true copy of the letter and attachment Rebecca Howe sent by email to Jason Rosen on 28 January 2010, at approximately 12.50 pm.



27. I did not give the undertaking as requested by VGSO on behalf of the DSE as I remained concerned that if I did give the undertaking as requested, VicForests may be prejudiced in the conduct of its defence because either the DSE or the proposed witnesses may not give consent to be called as a witness.
28. I did not issue subpoenas to compel the proposed witnesses to give evidence because I remained concerned that VicForests was not sufficiently aware of what each of the DSE's proposed witnesses would say before subpoenaing them to give evidence.
29. On 23 February 2010, Vanessa Bleyer of Bleyer Lawyers confirmed the Plaintiff did not agree to the inclusion in the Agreed Book of Documents the report entitled "*The Effects of Timber Harvesting on the Long-footed Potoroo (Potorous longipes), Parks and Forests Report Series 06-1, Department of Sustainability and Environment*" co-authored by Ryan Chick (**Report**). As such, I decided to issue a subpoena to Ryan Chick for production of the Report.
30. On 5 February 2010, at approximately 1.26 pm, Jason Rosen sent me an email. For convenience the email provides as follows:

"We have arranged to hold discussions early next week with Stephen Henry and Andrew Murray to ascertain their attitude to being interviewed by VicForests' lawyers for the purposes of the proceeding.

We should be in a position early next week, after we have had these discussions, to provide you with DSE's position on your proposed form of undertaking."

Now produced and shown to me and marked "**JAK-7**" is a true copy of the email I received from Jason Rosen on 5 February 2010, at approximately 1.26 pm.

31. On 5 February 2010, at approximately 1.51 pm, I sent an email to Jason Rosen. For convenience I note the email provides:

"Thank you for your response.

If I can impress upon you the urgency to meet with DSE personnel referred to in my previous correspondence, it may go some way to expediting your instructions.

As you are aware the trial is fixed for hearing in just more than 3 weeks. Dr Appleford communicated to me his approval to schedule further meetings while you consider the form of undertaking.



The position of Stephen Henry and Andrew Murray should not impede the scheduling of the further meeting with Mr Loyn and Mr Chick. Could you please schedule as soon as possible a meeting with Mr Chick and My Loyn and confirm when you have done so.

I otherwise look forward to your comments to the form of undertaking sent to you on 28 January 2010 and the outcome of your approach to Stephen Henry and Andrew Murray."

Now produced and shown to me and marked "JAK-8" is a true copy of the email I sent Jason Rosen on 5 February 2010, at approximately 1.51 pm.

32. Now produced and shown to me and marked "JAK-9" is a true copy of an email chain between myself and Dr Peter Appleford between 3 February 2010 and 10 February 2010. For convenience I set out the contents of that email chain below:

Wednesday, 10 February 2010, 4.40 pm

Jonathan Kramersh to Dr Peter Appleford

"Apologies for troubling you again but it appears that contrary to your instructions there has been no further meetings scheduled.

We are desperately attempting to complete our preparation prior to hearing and would greatly appreciate any assistance you can give us to schedule meetings with Richard Loyn and Ryan Chick.

We have not heard the outcome of the approach to Stephen Henry and Andrew Murray and would appreciate urgent confirmation of whether they are prepared to offer their assistance.

I do not intend to circumvent the legal advisors assisting the DSE with this matter, but have been unsuccessful progressing this matter with them for nearly 3 weeks."

Thursday, 11 February 2010, 9.35 am

From Dr Peter Appleford to Jonathan Kramersh,

"[T]here has been some issues with the preparedness of the witnesses to meet. It goes to being issued a subpoena without their prior agreement.

To this effect there is little I can do at [sic] present.

I have asked DSE legal and VGSO to discuss this with yourself directly to see if the situation can be resolved."

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33. On 23 February 2010, at approximately 5.04 pm, I sent an email to Chris Stafford. For convenience I note that the email provides:

"We enclose by way of courtesy, subpoena and letter served on VGSO this afternoon securing the attendance of Ryan Chick at trial.

As previously discussed with you, Stephen Lee and Jason Rosen, we and our counsel also wanted to meet with Stephen Henry.

At this stage we do not wish to secure the attendance of other DSE witnesses and we are enquiring whether you could approach Stephen Henry to enquire whether he will agree to meet with us and our counsel, perhaps on Monday morning. We will be in Sale on Monday morning as the trial will commence later in the day. I understand that this request has previously been made but it may be work while repeating and for you to make separate enquiries with Stephen Henry and get back to me.

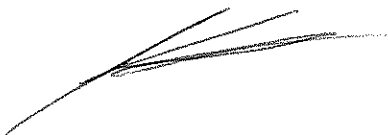
The precise time and location of the interview will need to be confirmed."

Now produced and shown to me and marked "JAK-10" is a true copy of the email I sent to Chris Stafford on 23 February 2010 at approximately 5.04 pm.

34. On 26 February 2010 I confirmed with Chris Stafford and Jason Rosen that I would give the undertaking in relation to Stephen Henry solely to secure a meeting with him prior to the commencement of the trial.
35. On 1 March 2010, at about 9.00 am, I met with Stephen Henry at the Quest Apartments in Sale.
36. On 1 March 2010, at approximately 2.11 pm, I received an email from Jason Rosen. For convenience I note the email provides:

"We understand that you met with Stephen Henry this morning to discuss various matters relating to the EEG v VicForests proceeding. As discussed previously, Stephen met with you on the basis that he would not be called as a witness by VicForests without his prior written consent. Out of an abundance of caution and to avoid any doubt, can you please confirm by return email that the undertaking you provided in the email below is to the following effect:

VicForests will not issue any subpoena in relation to Stephen Henry of the Department of Sustainability and Environment (DSE) or otherwise seek to adduce any evidence from Mr Henry, for the purposes of Victorian Supreme Court Proceeding No 8547 of 2009, without first



obtaining permission in writing from Stephen Henry and from Peter Appleford, Executive Director Forests and Parks, DSE."

Now produced and shown to me and marked "JAK-11" is a true copy of the email I received from Jason Rosen on 1 March 2010 at approximately 2.11 pm.

37. On 1 March 2010, at approximately 6.36 pm, I sent an email to Jason Rosen. For convenience I note the email provides:

"I confirm our meeting this morning with Stephen Henry.

I also confirm the undertaking on the basis that VicForests will not issue any subpoena in relation to Stephen Henry (Mr Henry) of the Department of Sustainability and Environment (DSE) or otherwise seek to adduce any evidence from Mr Henry, for the purposes of Victorian Supreme Court Proceeding No 8547 of 2009, without first obtaining permission in writing from Mr Henry and from Peter Appleford, Executive Director Forests and Parks, DSE.

I trust this satisfies your request ..."

Now produced and shown to me and marked "JAK-12" is a true copy of the email I sent to Peter Appleford on 1 March 2010 at approximately 6.36 pm.

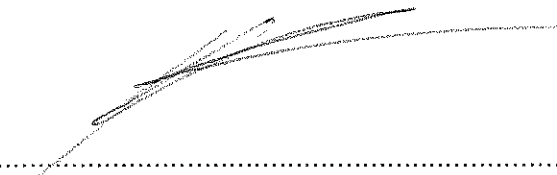
38. I telephoned Stephen Henry on 12 March 2010 to ask him whether he would give me his permission if VicForests decided to call him to give evidence. Stephen Henry told me that the only reason he agreed to meet with me on 1 March 2010 was on the understanding that I had given him my undertaking as requested by the VGSO and that he preferred not to give evidence and he would not give such permission.

SWORN at MELBOURNE

on

14 March 2010

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Jonathan Alan Kramersh

Before me:



Rebecca Veronica Howe
Level 21, 570 Bourke Street, Melbourne
An Australian Legal Practitioner
(within the meaning of the
Legal Profession Act 2004)