
Media Release

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Unanimous Federal Court decision a major win for Victorian hardwood timber industry, confirms RFAs provide national environmental protections

The full bench of the Federal Court has today delivered an historic win for Australia's sustainable native forest industries by confirming that forestry operations covered by Regional Forest Agreements provide all the environmental protections required by national environmental laws. In a unanimous decision, the Court upheld VicForests' appeal against a single-judge decision 12 months ago which had created significant legal uncertainty for RFAs and for the tens of thousands of forest industry jobs that the bilateral state-Commonwealth agreements underpin.

At the heart of the appeal was whether the Commonwealth EPBC Act could apply to forestry operations covered by an RFA, or whether the RFAs provide an equivalent and alternative (as VicForests maintained) regulatory framework with Commonwealth oversight to protect "Matters of National Environmental Significance". The Full bench today ruled that they do, and consequently the EPBC Act does not also apply.*

Australian Forest Products Association CEO Ross Hampton said today's decision was vindication for Australia's sustainable forest industries which are regulated to the highest environmental standards in the world.

"Today's decision provides certainty for Victoria's native timber industry, and indeed for forest industry workers around the country who depend on the operational certainty that the robust RFA framework provides," Mr Hampton said.

"It is also further evidence that our sustainable forest industries provide all the necessary environmental protections for threatened species and Matters of National Environmental Significance that the EPBC Act requires.

"This decision should put an end once and for all to the claim that RFAs somehow 'exempt' forestry operations from national environmental laws or oversight, and I commend the Federal Court judges for confirming this beyond doubt."

Victorian Forest Products Association CEO Deb Kerr welcomed the decision, and hoped it will put an end to the lawfare that has stalled VicForests' planned forestry operations in the Central Highlands for three years.

"I call on the activists to respect the full bench of the Federal Court's decision and stop the litigation so that VicForests can resume timber harvesting operations and provide certainty for the thousands of Victorian hardwood timber industry workers," Ms Kerr said.

"Today's decision has the effect of overturning all of Justice Mortimer's decision last May, which means those who seized on that decision to wrongly claim that VicForests' timber was 'illegal' should now apologise and correct the record," Ms Kerr concluded.

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*Extract from Full Bench Judgment, (from paragraphs 126-130):

Where an RFA is in force, that agreement will provide for Commonwealth accreditation of State processes. As has already been set out above, by cl 46 of the [Central Highlands] CH RFA, the Commonwealth and Victoria agreed that Victoria's forest management system (including its legislation, policies, codes, plans and management practices) provided for continuous improvement in [Ecologically Sustainable Forest Management] ESFM. By cl 47, the Commonwealth accredited Victoria's forest management system for the Central Highlands, including the systems and processes established by the Code. It is those systems and processes, together with the remedies available under Victorian law, in particular the offences created by the [Sustainable Forests (Timber) Act 2004 (Vic)] SFT Act, which govern forestry operations undertaken in the region covered by the CH RFA.

Through the process of negotiating the CH RFA, the Commonwealth has accepted its reliance on the State processes and management approaches as being sufficient to accommodate the Commonwealth's interest.

Those systems and processes under Victoria's forest management system include those relating to endangered species, which might otherwise be subject to the Commonwealth's requirements in Div 1 ("Requirements relating to matters of national environmental significance") of Pt 3 of the EPBC Act...

In light of these reasons, the primary judge's finding (Separate Question reasons at [155]) that the actual conduct of forestry operations (being an action for the purposes of the EPBC Act) must be undertaken in accordance with the contents of the CH RFA – that is, in accordance with any restrictions, limits, prescriptions, or contents of the Code – in order to secure the benefit of the exemption in s 38(1) cannot be sustained. Ground 1 of the appeal must succeed.

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