

FEDERAL GOVERNMENT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY
RECEIVED (and for relief under section 16 Administrative Decisions (Judicial Review) Act 1977)

20 FEB 2012

No. _____ of 2012

Fees Paid Federal Court of Australia
Receipt No.
District Registry: Victoria

Division: General

Secretary to the Department of Sustainability and Environment (Vic)

Applicant

Minister for Sustainability, Environment, Water,
Population and Communities (Cth)

Respondent

To the Respondent

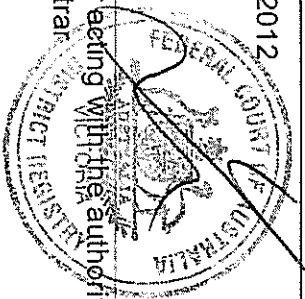
The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: 23 March 2012 at 9:30am
Place: Commonwealth Law Courts
305 William Street, Melbourne, Victoria

Date: 28 February 2012



Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of _____ Applicant
Prepared by _____ Peter Stewart
Law firm _____ Victorian Government Solicitor
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Email eliza.bergin@vgsso.vic.gov.au
Address for service Level 25, 121 Exhibition Street, Melbourne VIC 3000
(include state and postcode)

Details of claim

On the grounds stated below, the Applicant applies for relief under section 39B of the *Judiciary Act 1903*.

The Applicant also applies to the Court to review the decision of the Respondent that the Applicant's proposed action, to conduct a research trial involving strategic cattle grazing within the Alpine National Park, will have clearly unacceptable impacts on a matter protected by Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the **EPBC Act**).

The Applicant is aggrieved by the decision because the Applicant is not able to proceed with the proposed research trial. The research trial is required to investigate fuel and bushfire risk management involving strategic cattle grazing. The Applicant is responsible for managing public land in the State of Victoria and has specific functions in relation to national and state parks to ensure that appropriate and sufficient measures are taken to protect them from injury by fire.

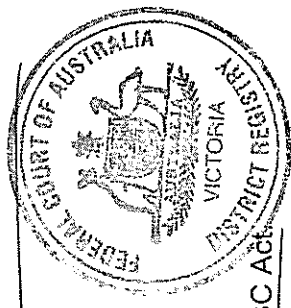
Grounds of application

A. *The decision was made in excess of jurisdiction*

1. The decision was purportedly made under section 74B(1) of the EPBC Act.
2. Section 74B(1) of the EPBC Act authorises the making of a decision, summarily disposing of the referral of a proposed action, if the Respondent considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3 and if the Respondent decides that Division 1A of Part 7 of the EPBC Act should apply to the referral.
3. The decision identified National Heritage places as the matter protected by a provision of Part 3 of the EPBC Act, and the relevant provisions as sections 15B and 15C.
4. The place proposed for the research trial, the Australian Alps National Parks and Reserves, is a National Heritage place.
5. Section 74B(1)(a) of the EPBC Act does not authorise the Respondent to conclude that it is clear that an action would have unacceptable impacts on the basis of information not in the referral.
6. The Respondent based his decision on information that was not in the referral.]

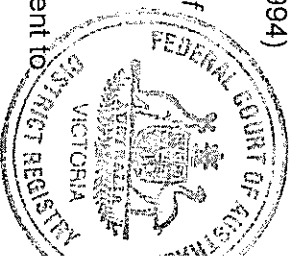
Particulars

- (i) *Wahren et al*, "Long-term vegetation change in relation to cattle grazing in subalpine grassland and heathland on the Bogong High



Plains: an analysis of vegetation records from 1945 to 1994", (1994)
42 *Australian Journal of Botany* 607.

(ii) Groves, *Grazing in the Victorian High Country: an assessment of the scientific adequacy of grazing studies in the Victorian High Country 1945-1998, with some recommendations for future research*, 1998, CSIRO, Canberra.



7. Further, section 74B(1)(a) of the EPBC Act does not authorise the Respondent to conclude that it is clear that an action would have unacceptable impacts on a matter not protected by Part 3 of the EPBC Act.
8. Sections 15B and 15C of the EPBC Act have no application to the proposed action by the Applicant unless:
 - a. the action has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992, as amended and in force for Australia (**Biodiversity Convention**); and
 - b. the prohibition enacted by those sections against taking the action is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.
9. Protection of the National Heritage values for the Australian Alps National Parks and Reserves of "recreation", "aesthetic characteristics" and "social values", upon which the Respondent relied in making the decision, is not appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention and those values are therefore not protected in respect of the proposed action by a provision of Part 3 of the EPBC Act.
10. Further and alternatively, the Respondent failed to consider or decide whether Division 1A of Part 7 of the EPBC Act should apply to the referral, as required by section 74B(1)(b) of the EPBC Act.
11. The decision is vitiated by jurisdictional error.
12. The Applicant also applies for review on the grounds provided for in section 5(1)(c), (d) and (f) of the *Administrative Decisions (Judicial Review) Act 1977*.
- B. ***The decision was made in breach of natural justice***
13. The Respondent took into account material that was before him, but which did not form part of the Applicant's referral, without giving the Applicant an opportunity to deal with it.

Particulars

Particulars to paragraph 6 above are repeated.

14. The decision is vitiated by jurisdictional error.
15. The Applicant also applies for review on the grounds provided for in section 5(1)(a) and (c) of the Administrative Decisions (Judicial Review) Act 1977.

Orders sought

The Applicant seeks the following relief under section 39B of *Judiciary Act 1903*:

1. A writ of mandamus, directed to the Respondent, commanding the Respondent to determine according to law the Applicant's referral of a proposed action dated 2 December 2011.
2. A writ of certiorari, quashing the Respondent's decision, made on 31 January 2012, that the Applicant's proposed action was clearly unacceptable.

The Applicant seeks the following relief under section 16 of the *Administrative Decisions (Judicial Review) Act 1977*:

3. An order setting aside the Respondent's decision, made on 31 January 2012, that the Applicant's proposed action was clearly unacceptable.

And the Applicant seeks:

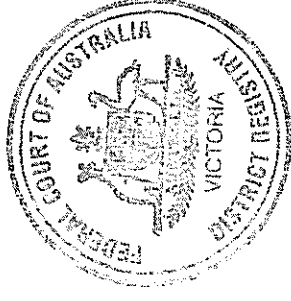
4. Costs.
5. Such further or other orders as this Court thinks fit.

Applicant's address

The Applicant's address for service is:

Place: Victorian Government Solicitor's Office c/o Eliza Bergin, Principal Solicitor
Level 25, 121 Exhibition Street, Melbourne VIC 3000
Email: eliza.bergin@vgso.vic.gov.au

The Applicant's address is 8 Nicholson Street, East Melbourne, Victoria 3002.



Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 28 February 2012



Peter Stewart
Signed by *Peter Stewart*, Victoria Government Solicitor
Lawyer for the Applicant
Per *PS*

