



**FORM 5G**

Rule 5.02(2), 56.01(2)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST**

Case: S ECI 2025 03376  
Filed on: 16/06/2025 03:37 PM

No.

**B E T W E E N**

Australians for Animals (New South Wales) Inc (Y0683319)

Plaintiff

-and-

Secretary to the Department of Energy, Environment and Climate Action

Defendant

**ORIGINATING MOTION FOR JUDICIAL REVIEW**

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Date of Document:	16 June 2025		
Filed on behalf of:	Plaintiff		
Prepared by:	Bleyer Lawyers Pty Ltd	Telephone:	03 9600 4224
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**TO THE DEFENDANT**

**TAKE NOTICE** that this proceeding by originating motion has been commenced by the plaintiff for the relief or remedy set out below.

**IF YOU INTEND TO DEFEND** the proceeding, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically in RedCrest or in person at the Principal Registry, 450 Little Bourke Street, Melbourne. See [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au); and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this originating motion.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff **MAY OBTAIN JUDGMENT AGAINST YOU** without further notice.

**IF YOU FILE** an appearance within the proper time, the plaintiff cannot obtain judgment against you except by application to the Court after further notice to you. There will first be a directions hearing of which you will receive notice by summons or otherwise.

**THE PROPER TIME TO FILE AN APPEARANCE** is as follows:

- (a) where you are served with the originating motion in Victoria, within 10 days after service;
- (b) where you are served with the originating motion out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the originating motion in Papua New Guinea, within 28 days after service;
- (d) where you are served with the originating motion in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the originating motion.

**FILED**

Prothonotary

## THE PLAINTIFF CLAIMS:

1. An order in the nature of certiorari quashing the authorisation purportedly issued under section 28A of the *Wildlife Act 1975* (Vic) (**Wildlife Act**) by the Conservation Regulator as a delegate of the Secretary in or around April 2025 to permit activity in order to respond to wildlife welfare arising from the March 2025 bushfires at Budj Bim National Park (**Park**), including the disturbance, marking and/ or destruction of wildlife, as part of emergency response arrangements (the **Authorisation Decision**), purportedly on the basis that the Conservation Regulator was satisfied that the authorisation was necessary under s 28A(1)(d).
2. Further or alternatively, a declaration that the Authorisation Decision is invalid and of no effect.
3. Further or alternatively, a declaration that the Secretary's decision to undertake, direct, or otherwise procure the aerial assessment and destruction of *Phascolarctos cinereus* (Koalas) at the Park in or around April 2025 (the **Program Decision**) was unlawful and invalid.
4. Further or alternatively, an injunction restraining the Secretary from undertaking or procuring further aerial assessment and destruction of Koalas at the Park.
5. Costs.
6. Such other relief as the Court deems fit.

## THE GROUNDS RELIED UPON ARE:

1. The Authorisation Decision was made in excess of jurisdiction, such that the Authorisation Decision and, consequently, the Program Decision were affected by jurisdictional error.

### Particulars

- a) The Authorisation Decision purports to authorise the disturbance of wildlife in circumstances where such disturbance is not capable of being authorised under section 28A(1) of the *Wildlife Act*.
- b) The disturbance of wildlife may only be authorised pursuant to section 28(1A) of the *Wildlife Act*. That provision enumerates limited circumstances in which authorisation to disturb wildlife may be issued, none of which were satisfied in relation to the Authorisation Decision.

- c) The Program Decision contemplated the disturbance of wildlife, specifically, by approaching Koalas in trees from helicopters. The Authorisation Decision was a statutory precondition to the Program Decision. The invalidity of the Program Decision is therefore coextensive with the invalidity of the Authorisation Decision.
  - d) Further particulars may be provided upon receipt of the formal Authorisation Decision.
2. Further or alternatively to paragraph 1, in making the Authorisation Decision, the Conservation Regulator as a delegate of the Secretary made an error of law, such that the Authorisation Decision is affected by an error of law on the face of the record.

### Particulars

The “record” is the document containing the authorisation purportedly given pursuant to the Authorisation Decision.

The Plaintiff refers to and repeats the particulars a) and b) under paragraph 1 above.

Further particulars may be provided upon receipt of the formal Authorisation Decision.

3. Alternatively to paragraphs 1 and 2, if the Authorisation Decision was valid, the Program Decision was otherwise unlawful for want of compliance with the *Wildlife Act* and — or, alternatively, or — the *Prevention of Cruelty to Animals Act 1986 (Vic)* (**POCTA Act**), such that the Program Decision was affected by jurisdictional error.

### Particulars

- a) The purported Authorisation Decision did not authorise use of a firearm from an aircraft to take wildlife, as required by regulation 118(2) of the *Wildlife Regulations 2024 (Vic)* (**Wildlife Regulations**). To the extent that the Program Decision directed or otherwise involved the use of a firearm from an aircraft to take wildlife, it was consequently unauthorised.
- b) The purported Authorisation Decision did not authorise use of a gun or other weapon for the purpose of taking wildlife, as required by regulation 118(5) of the *Wildlife Regulations*. To the extent that the Program Decision directed or otherwise involved the use of a gun or other weapon to take wildlife, it was consequently unauthorised.

- c) To the extent that the Program Decision directed or otherwise involved the disposal of obviously diseased, sick or injured wildlife, it was unauthorised as none of the exceptions enumerated in regulation 123(2) of the *Wildlife Regulations* applied. In particular, the purported Authorisation Decision did not authorise the disposal of obviously diseased, sick or injured wildlife.
  - d) By reason of particulars a), b), and c), the Program Decision directed or otherwise involved the unlawful wounding of animals, contrary to section 9(1)(a) of the *POCTA Act*.
  - e) The Program Decision was also not supported by a scientific procedures field work licence under section 32A of the *POCTA Act* or a scientific procedures premises licence under section 29 of the *POCTA Act* authorising the operations contemplated by the Program Decision. To the extent that the Program Decision directed or involved the carrying out of a scientific procedure or a program of scientific procedures, including to verify the accuracy of the aerial shooting method, it was consequently unauthorised.
  - f) Further particulars may be provided.
4. Further or alternatively to paragraph 3, if the Authorisation Decision was valid, the Program Decision was otherwise unlawful for want of compliance with the *Wildlife Act* and the *POCTA Act*, such that the Program Decision was contrary to law or was affected by an error of law.

### **Particulars**

The Plaintiff refers to and repeats the particulars under paragraph 3 above.

### **EXTENSION OF TIME:**

To the extent that any extension of time is required, the Plaintiff relies on the following circumstances:

1. The Plaintiff first became aware of the nature of the Program Decision in or around mid-April 2025.
2. The Plaintiff first became aware of the Authorisation Decision, as well as the circumstances surrounding and the details of the Program Decision, on 29 May 2025.

**FURTHER PARTICULARS** of the claim appear in the affidavit made in support of the claim. A copy of the affidavit and of any exhibit to the affidavit is served with this originating motion.

1. Place of trial— Melbourne.
2. This originating motion was filed for the plaintiff by Vanessa Elizabeth Bleyer, Bleyer Lawyers Pty Ltd, of 10/250 Queen Street, Melbourne VIC 3000.
3. The address of the plaintiff is— 36 Tongarra Drive, Ocean Shores NSW 2483
4. The address for service of the plaintiff is— Bleyer Lawyers Pty Ltd, 10/250 Queen Street, Melbourne VIC 3000.
5. The email address for service of the plaintiff is— [vanessa@bleyerlawyers.com.au](mailto:vanessa@bleyerlawyers.com.au)
6. The address of the defendant is— 8 Nicholson Street, Melbourne VIC 3002.