

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

No. of 2009

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

**AFFIDAVIT OF ELIZA MARIE POOLE**

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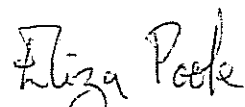
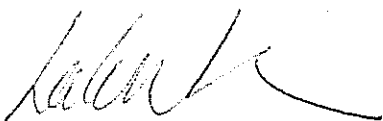
Date of document:	24 August 2009	
Filed on behalf of:	Plaintiff	
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Level 1, 550 Lonsdale Street		Fx: 9600 4225
Melbourne 3000		Code: 101385
Em: <a href="mailto:vanessa@bleyerlawyers.com.au">vanessa@bleyerlawyers.com.au</a>		Ref: Vanessa Bleyer

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I, Eliza Marie Poole, Zoologist, of 65 Eleanor Street Footscray in the State of Victoria

SOLEMNLY AND SINCERELY AFFIRM as follows:

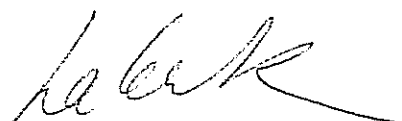
1. I am a qualified Zoologist, specialising in the conservation and management of threatened species. In 2004, I completed a Bachelor of Arts / Bachelor of Science degree with Honours at the University of Melbourne, majoring in Environmental Studies, Environmental Science and Zoology. In 2006, I completed a Master of Environment at the University of Melbourne, majoring in Conservation, Restoration and Land Management.
2. As part of my Master's degree, I undertook research into the distribution and abundance of terrestrial marsupials present at the Little River Earth Sanctuary (now the Mt. Rothwell Conservation and Research Centre), near Werribee,



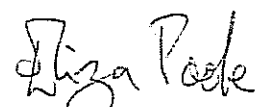
Victoria. This research involved the observation, capture, marking and recapture of live Rufous Bettong (*Aepyprymnus rufescens*), Eastern Quoll (*Dasyurus viverrinus*), Southern Brown Bandicoot (*Isodon obesulus*), Eastern Barred Bandicoot (*Perameles gunnii*) and Long-nosed Potoroo (*Potorous tridactylus*). As the Long-nosed Potoroo is a close relative of the Long-footed Potoroo (*Potorous longipes*), with similar appearance and behaviours, I am thus familiar with the general morphology and behaviour of potoroos.

3. Following completion of my academic training, I was employed full-time for one year as a Technical Officer and Zoologist by Ecology Partners, an environmental consultancy business based in Melbourne. I continue to perform consulting work as a Zoologist on a freelance basis.
4. I make this affidavit from my own knowledge unless otherwise stated. The opinions stated in this affidavit are mine and are honestly held by me. I have made all reasonable inquiries in the time afforded to me before forming these opinions.
5. On 23 August 2009, I received a request from Vanessa Bleyer, of Bleyer Lawyers, to identify the species of an animal that had been caught on film. Ms. Bleyer was referred to me by my partner, Rupert Watters, who is a solicitor with the Environment Defenders Office, a community legal centre specialising in environmental law. Mr. Watters is assisting Ms. Bleyer on this case.
6. Neither my relationship with Mr. Watters nor his association with the Environment Defenders Office or Bleyer Lawyers has affected my opinion on the identity of the animal in the footage.

Eliza Poole



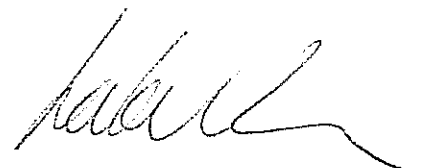
7. By email, Ms. Bleyer provided me with a five second video clip of the animal in question and a still photograph. I have been informed, and believe, that the footage comes from the area known as Brown Mountain in East Gippsland. Now produced and shown to me and marked **EMP-1** is an ~~un~~<sup>EP</sup>sworn copy of the affidavit of Andrew Stephen Lincoln and its exhibits. Exhibits **ASL-2** and **ASL-3** appear to be identical to the video clip and still photograph that I received from Ms. Bleyer.
8. Before viewing the material provided to me, I generated a list of all species previously recorded within a 10-kilometre radius of the Brown Mountain area using the Atlas of Victorian Wildlife (AVW). The AVW is a database produced and maintained by the Information Services Section of the Department of Sustainability and Environment, which records the results of fauna surveys from the Department as well as a number of other credible zoological sources.
9. An electronically searchable version of the AVW, called the Victorian Fauna Database, enables users to locate records from particular areas of Victoria. Using the August 2004 version of the Database, I performed a search in the area bounded by latitude -37°12'29" to -37°20'40" and longitude +148°35'16" to +148°46'59". Now produced and shown to me marked **EMP-2**, entitled 'Brown Mountain Species List' (hereafter referred to as the 'AVW list') is a document recording the results of my initial search.
10. Before viewing the material provided to me, I also read through the survey report, entitled '*Survey for arboreal mammals, Long-footed Potoroo and Spiny Crayfish in proposed logging coupes 840-502-0015 and 840-502-0019, Brown Mountain Creek Catchment, Brodribb Forest Block, Errinundra Plateau, January-March 2009*',



written by Stephen Henry and Tony Mitchell, Department of Sustainability and Environment. Now produced and shown to me marked **EMP-3**, is a copy of that report (hereafter referred to as the 'survey report'). Henry and Mitchell recorded five species being detected by remote survey cameras, including Bush Rat, Mountain Brushtail Possum, Long-nosed Bandicoot, Feral Cat and Red Fox.

11. My initial AVW search listed 41 species of mammal as present in the search area, including 12 terrestrial mammals, 10 arboreal marsupials, one aquatic marsupial, 13 bats and five introduced mammals. This list includes the five species detected by remote survey camera in the survey report. Only one potoroid species, the Long-footed Potoroo, has been previously recorded in the search area.
12. I then reviewed the footage and the photograph provided by Ms. Bleyer. After excluding all other possible candidate species from the AVW list and the survey report, on the basis of size, shape and pattern of movement, I believe that the animal on film is almost certainly a Long-footed Potoroo.
13. The animal on film is clearly a terrestrial marsupial. It is not an aquatic marsupial (e.g. platypus), a bat, or an introduced mammal (e.g. rabbit, goat, dingo/dog, fox or cat). Arboreal marsupials (e.g. possums, gliders, koala) may sometimes be seen on the ground. However, based on size and shape, the animal on film is not one of these species.
14. Based on size, shape and its hopping pattern of movement, the animal on film appears to be a macropod (i.e. it is not a wombat, echidna, rat, antechinus or bandicoot).

Eliza Poole



15. My initial search listed four macropod species as having previously been recorded in the area:
- Long-footed Potoroo;
  - Black (or Swamp) Wallaby (*Wallabia bicolor*);
  - Red-necked Wallaby (*Macropus rufogriseus*); and,
  - Eastern Grey Kangaroo (*Macropus giganteus*).
16. It is conceivably possible that, given its size, the animal on the film is a juvenile wallaby or kangaroo (a 'young at foot'). In that case, I would expect the mother to be nearby. The animal on film appears to be alone, but it may be that the mother is nearby and was simply not caught on film.
17. Given the animal's stance, facial structure (length of nose and bulk around the jaw) and the shape and position of its tail, however, I believe that the animal on film is not a wallaby or kangaroo.
18. In my view, based on my knowledge of Victorian marsupials and previous experience with potoroos, the most likely explanation is that the animal in question is a potoroo. Given that only two species of potoroo occur in Victoria, and that the Long-nosed Potoroo has never been recorded as occurring within the Brown Mountain area, I am confident in my opinion that the animal on film is a Long-footed Potoroo.

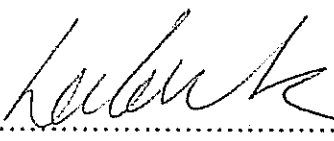


19. In making my identification I referred to two texts: *The Mammals of Australia* (2004, revised edition) edited by Ronald Strahan, and *A Field Guide to the Mammals of Australia* (2004, second edition) by Peter Menkhorst and Frank Knight.

Sworn at MELBOURNE in the State of Victoria  
this 24<sup>th</sup> day of August 2009

Eliza Poole (ELIZA POOLE)

Before me: .....

  
Leilani Ruby Kuhn.  
A legal ~~practitioner~~ practitioner  
within the meaning of  
the Legal Profession Act  
2004.

Eliza Poole