

NOTICE OF FILING

Details of Filing

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File Number: NSD1056/2024
File Title: ENERGY RESOURCES OF AUSTRALIA LTD ABN 71 008 550 865 v
MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN
AUSTRALIA (COMMONWEALTH) &ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. NSD1056 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Energy Resources of Australia Limited ABN 71 008550 865

Applicant

Minister for Resources and Minister for Northern Australia (Commonwealth) and others named in the schedule

Respondents

Affidavit of: **William Packer**
Address: Unit 5, Level 1, 89 Forrest Street, Cottesloe, Western Australia, 6011
Occupation: Director
Date: 4 October 2024

I William Packer, say on oath:

1. I am a director of Packer & Co Ltd (ACN 061 804 671) (**Packer**) and am authorised to make this affidavit on its behalf.
2. I make this affidavit in support of the interlocutory application dated 4 October 2024 made by Zentree Investments Limited (**Zentree**) and Packer for a grant of leave to intervene in these proceedings pursuant to sections 236 and 237(1) of *Corporations Act 2001* (Cth) (**Corporations Act**) and rule 9.12(1) of the *Federal Court Rules 2011* (Cth).
3. I make this affidavit based on matters within my own knowledge, information and belief except where otherwise stated. Where I depose to matters from information and belief, I believe those matters to be true and correct.
4. Nothing contained in this affidavit is intended to waive any privilege that is attached to communications referred to in this affidavit and I am not authorised by Zentree or Packer to waive any such privilege.

Filed on behalf of (name & role of party)	Zentree Investments Limited and Packer & Co Ltd		
Prepared by (name of person/lawyer)	Gordon Grieve		
Law firm (if applicable)	Piper Alderman		
Tel	(02) 9253 9999	Fax	(09) 9932 9999
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[Version 3 form approved 02/05/2019]

Background

5. Packer is the Responsible Entity of a Managed Investment Scheme and, through a custodian, holds shares in the applicant, Energy Resources of Australia Ltd (ERA). Based on this, I believe that Packer is entitled to be registered as a member of ERA.
6. ERA's primary business has historically been the mining of uranium. ERA has held valuable mining assets in the Northern Territory which are surrounded by the north eastern portion of the Kakadu National Park:
 - (a) the first was a mineral lease in the Ranger Project Area, which was developed into an open cut mine known as the Ranger mine (**Ranger Mine**); and
 - (b) the second is the mineral lease at Jabiluka known as Minera Lease 1 (**MLN1**), which is the subject of these proceedings and contains one of the world's largest uranium deposit in the world.
7. ERA mined uranium at the Ranger Mine until about 2012, with processing of uranium ceasing in 2021, and it has since been engaged in rehabilitating the land on which the Ranger Mine was situated.
8. On 6 August 2024, ERA published an ASX Announcement entitled "ERA commences legal proceedings" which related to these proceedings. Among other things, the ASX Announcement stated:

"...On 6 August 2024, ERA commenced proceedings in the Federal Court of Australia (Court) against the Minister for Resources and Minister for Northern Australia (Commonwealth), the Commonwealth of Australia, the Minister for Mining and Minister for Agribusiness and Fisheries (Northern Territory), the Northern Territory and Jabiluka Aboriginal Land Trust, seeking judicial review of the Renewal Decision, including of the Commonwealth government's advice to the Northern Territory government to refuse the renewal of the Jabiluka Mineral Lease. ERA believes it had a right to have its renewal application lawfully determined and considers it was denied procedural fairness and natural justice in the decision-making process. ERA also considers that the decisions were subject to a number of other defects including because they were unreasonable."

A copy of ERA's 6 August 2024 ASX Announcement is annexed to this affidavit and marked "WP-1".
9. Following ERA's commencement of legal proceedings on 6 August 2024, I instructed Piper Alderman, on behalf of Packer, to provide advice in relation to the proceedings commenced by ERA.
10. Packer has since received advice from:
 - (a) Mr Alan Sullivan KC with respect to the potential cause of action held by ERA of a wrongful derogation from the grant of MLN1 arising from the first and third respondents' conduct with respect to the right of renewal of MLN1 (**Wrongful Derogation Claim**);




- (b) Dr Greg O'Mahoney of counsel with respect to:
- i. whether, among other things, the seventh respondent should be estopped from by reason of *res judicata*, issue estoppel or estoppel by deed from defending the proceedings on the basis of her contention that clause 2 of MLN1 is invalid (**Estoppel Defences**);
 - ii. whether arguments contending that clause 2 of MLN1 is invalid should not be permitted on the basis of delay (**Delay Defence**); and
- (c) Piper Alderman with respect to the Wrongful Derogation Claim, and the Defences in (b)i to (b)ii above (collectively referred to as **the Defences**).
11. Packer believes that:
- (a) the Wrongful Derogation Claim and the Defences have good prospects of success, or in the case of the Defences, have good prospects and should be made in this proceeding; and
 - (b) if the Wrongful Derogation Claim and the Defences are not made, ERA may be unable to bring the Wrongful Derogation Claim in the future and would be unable to make the Defences at a later date.
12. Piper Alderman and the solicitors for ERA have engaged in correspondence dated between 17 September 2024 and 2 October 2024 with respect to the proposed addition by Zentree and Packer of the Wrongful Derogation Claim and the Defences. The solicitors for ERA raised in that correspondence that the Wrongful Derogation Claim would not add anything to the action currently brought by ERA, that adding a separate cause of action may result in the vacation of the trial in these proceedings, and that it did not agree that the Defences raised with it would be upheld. Notwithstanding the matters raised in that correspondence, I remain of the view that it is in the best interests of ERA that the Wrongful Derogation Claim is brought and the Defences are relied upon in these proceedings.
13. Piper Alderman have also written to the NT Minister for Mining and Energy and the solicitors for the Northern Territory, the third and fourth respondents, between 18 September 2024 and 4 October 2024 with respect to the proposed addition by Zentree and Packer of the Wrongful Derogation Claim and asking that the NT Minister for Mining and Energy renew MLN1 in accordance with Condition 2 of MLN1. The NT Minister for Mining and Energy has not agreed to take the steps set out in those letters. Notwithstanding this position, I remain of the view that it is in the best interests of ERA that the Wrongful Derogation Claim is brought and the Defences are relied upon in these proceedings.



Sworn by the deponent
at Cottesloe
in Western Australia
on 4 October 2024
Before me:

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Signature of deponent



Signature of witness

THOMAS JOSEPH WOOLFORD
PIPER ALDERMAN

This document was signed and witnessed over audio-visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Schedule

No. NSD 1056 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent:	Commonwealth of Australia
Third Respondent:	Minister for Mining and Minister for Agribusiness and Fisheries (Northern Territory)
Fourth Respondent:	Northern Territory
Fifth Respondent:	Jabiluka Aboriginal Land Trust
Sixth Respondent:	Northern Land Council
Seventh Respondent:	Yvonne Margarula

Federal Court of Australia
District Registry: New South Wales
Division: General

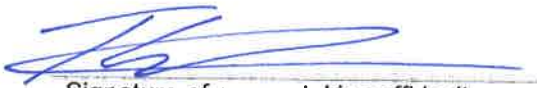
Energy Resources of Australia Ltd ABN 71 008 550 865
Applicant

Minister for Resources and Minister for Northern Australia (Commonwealth) and others
named in the schedule
Respondents

**Certificate Identifying Annexure
"WP-1"**

This is the annexure marked "WP-1" referred to in the Affidavit of **William Packer** sworn on 4 October 2024.

Before me:



Signature of person taking affidavit



ASX Announcement

ERA commences legal proceedings

6 August 2024

Energy Resources of Australia Ltd (**ERA**) refers to its previous announcement on 26 July 2024 regarding the Northern Territory government's decision not to renew the Jabiluka Mineral Lease based on advice from the Commonwealth government (**Renewal Decision**).

On 6 August 2024, ERA commenced proceedings in the Federal Court of Australia (**Court**) against the Minister for Resources and Minister for Northern Australia (Commonwealth), the Commonwealth of Australia, the Minister for Mining and Minister for Agribusiness and Fisheries (Northern Territory), the Northern Territory and Jabiluka Aboriginal Land Trust, seeking judicial review of the Renewal Decision, including of the Commonwealth government's advice to the Northern Territory government to refuse the renewal of the Jabiluka Mineral Lease. ERA believes it had a right to have its renewal application lawfully determined and considers it was denied procedural fairness and natural justice in the decision-making process. ERA also considers that the decisions were subject to a number of other defects including because they were unreasonable.

ERA is also seeking an interlocutory injunction to stay the Renewal Decision and its enforcement or execution. ERA has requested that the Court hears its interlocutory application on an urgent basis, given the imminent expiry of the Jabiluka Mineral Lease on 11 August 2024.

ERA considers that its applications are warranted after taking into account the circumstances in which the Renewal Decision was made, which include the Commonwealth Minister providing her advice within two days of the renewal application being referred to her, and without providing ERA an opportunity to comment on information received and relied upon or other matters which she took into account.

The Independent Board Committee (**IBC**), consisting of independent directors Mr Rick Dennis, the Hon. Mr Ken Wyatt and Mr Stuart Glenn, will act for ERA in relation to this and any other potential challenges to the Renewal Decision, including legal proceedings, in accordance with ERA's Conflicts of Interest and Related Party Transactions Policy.

ERA will keep shareholders informed of material updates in accordance with its continuous disclosure obligations.

This announcement is authorised by the Independent Board Committee.



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About Energy Resources Australia Ltd

Energy Resources of Australia Ltd (ERA) has been one of the nation's largest uranium producers and operated Australia's longest continually producing uranium mine.

After closure of the Ranger Mine in 2021, ERA is now committed to creating a positive legacy and achieving world class, sustainable rehabilitation of former mine assets.

The Ranger Rehabilitation Project is located on Aboriginal land and is surrounded by, but separate from, Kakadu National Park. ERA respectfully acknowledges the Mirarr people, Traditional Custodians of the land on which the Ranger Project Area is situated.

ERA's Ranger Project Area (100%) is located eight kilometres east of Jabiru and 260 kilometres east of Darwin, in Australia's Northern Territory. ERA also holds title to the Jabiluka Mineral Lease (100%) and is a signatory to the Long Term Care and Maintenance Agreement over the Jabiluka Mineral Lease.