

## NOTICE OF FILING

### Details of Filing

Document Lodged: Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 15/11/2024 3:53:53 PM AEDT  
Date Accepted for Filing: 15/11/2024 3:53:57 PM AEDT  
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.



**Further notice of a Constitutional matter  
under section 78B of the Judiciary Act 1903**

No. NSD 1056 of 2024

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

The First and Second Respondents give notice that the proceeding involves an additional matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

**Nature of Constitutional matter**

This case involves questions about whether the exercise by the Commonwealth Minister of a non-statutory, non-prerogative executive capacity to give advice was subject to requirements of reasonableness and procedural fairness. The Commonwealth parties will make the formal submission that the decision of the Full Court of the Federal Court in *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2021) 288 FCR 23; [2021] FCAFC 213 in relation to the questions below was wrong.

This submission gives rise to the following constitutional questions:

1. Is the exercise by the Commonwealth Minister of a non-statutory, non-prerogative executive capacity under s 61 of the Constitution to give advice subject to a condition of legal reasonableness, and if so does the nature of the capacity exercised affect the standard of legal reasonableness?

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Filed on behalf of the First and Second Respondent  
Minister for Resources and Minister for Northern Australia  
Commonwealth of Australia  
Prepared by: Grace Ng  
AGS lawyer within the meaning of s 551 of the *Judiciary Act 1903*  
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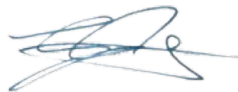
**Address for service** The Australian Government Solicitor  
Level 10, 60 Martin Place, SYDNEY NSW 2000

2. Is the exercise by the Commonwealth Minister of a non-statutory, non-prerogative executive capacity under s 61 of the Constitution to give advice conditioned by a requirement to afford procedural fairness and, if so, does the nature of the capacity affect the requirements of procedural fairness?

**Facts showing that section 78B Judiciary Act 1903 applies**

1. The Statement of Agreed Facts filed in the proceedings on 4 September 2024 and annexed to this notice includes further details of relevant factual matters. The facts noted below are by way of summary.
2. On 20 March 2024, the Applicant applied to renew Mineral Lease No. MLN1, being the mineral lease granted to Pancontinental Mining Limited and Getty Oil Development Company Limited pursuant to the *Mining Act 1980* (NT) in respect of the Jabiluka Project land for the term of 42 years for the purpose of mining uranium ore, expiring on 11 August 2024 (Jabiluka MLN1).
3. On or around 25 July 2024, the First Respondent advised the Third Respondent to refuse the Applicant's application to renew Jabiluka MLN1.
4. On or around 26 July 2024, the Third Respondent refused the Applicant's application to renew Jabiluka MLN1.

Date: 15 November 2024



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Signed by Grace Ng  
Lawyer for the First and Second  
Respondents