

## NOTICE OF FILING

### Details of Filing

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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.



## Affidavit

No. \_\_\_\_\_ of 20\_\_\_\_

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

Affidavit of: **Leon Chung**  
 Address: 161 Castlereagh Street  
 Occupation: Solicitor  
 Date: 6 August 2024

I Leon Chung, Solicitor, affirm:

1. I am a partner at Herbert Smith Freehills (HSF), the solicitors for Energy Resources of Australia Ltd (**ERA**), the Applicant in this proceeding. I have the carriage and conduct of this matter.
2. This is my second affidavit in this proceeding, which is also made in relation to ERA's application for interlocutory relief dated 6 August 2024. I am authorised to make this affidavit on behalf of ERA. Any terms have the same meaning as defined in my first affidavit.
3. Shown to me at the time of affirming this affidavit is a bundle of documents marked "**Confidential Exhibit LC-2**". Where I refer to documents in this affidavit, I refer to their page number in Exhibit LC-2.

### A. Section 43 Agreement

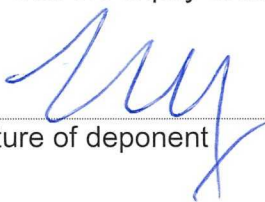
Filed on behalf of	Energy Resources of Australia Ltd ABN 71 008 550 865, Applicant		
Prepared by	Leon Chung		
Law firm	Herbert Smith Freehills		
Tel	02 9225 5716	Fax	
Email	leon.chung@hsf.com		


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 161 Castlereagh St  
 Sydney NSW 2000

A handwritten signature in blue ink, appearing to read 'L. Chung'.

4. As noted in my first affidavit at 10, on 21 July 1982, the Northern Land Council (NLC) entered into an agreement with Pancontinental Mining Limited and Getty Oil Development Company Limited for the concepts of design and operation of the Jabiluka Project pursuant to section 43 of the *Aboriginal Land Rights (NT) Act 1976 (Cth)* (Section 43 Agreement). A copy of that agreement is at page 1 of Confidential Exhibit LC-2.
5. Clause 33 of the Section 43 Agreement provides that: "The terms of this Deed (but not the existence of the agreement therein or the fact that NLC has given the consents referred to in Clause 4 and 5 hereof) shall be treated as confidential. The Deed or any of its contents shall not be divulged by a party without the prior written consent of the other party except to the extent required by or necessary for" exceptions which include, eg, Commonwealth legislation and the rules of any stock exchange but do not include disclosure in legal proceedings.
6. Accordingly, in this affidavit I set out the confidential terms of the Section 43 Agreement which are relevant to my first affidavit.
7. In addition to the terms of the Deed Poll noted at 12 of my first affidavit, I note that Section 43 imposes various obligations on ERA including to:
  - a. make payments to NLC for any period of time that operations in respect of the Jabiluka project are suspended (cl 10.2(b));
  - b. invest in various initiatives, including inter alia, the creation of tertiary education scholarships and work opportunities for the Indigenous communities (cl 16).
8. With respect to the expiry of the other agreements referred to in section B of my first affidavit, I note that the Section 43 Agreement expires with the expiry of MLN1 (in accordance with cl 24.1 of that Agreement). This means that the LTCMA will conclude with the expiry of the Section 43 Agreement. Consequently, ERA's obligations with respect to the rehabilitation of the land at Jabiluka and any potential future right to undertake mining activity will conclude concurrently with the expiry of MLN1.

Affirmed by the deponent )  
 at Sydney )  
 in New South Wales )  
 on 6 August 2024 )  
 Before me: )

  
 \_\_\_\_\_  
 Signature of deponent

  
 \_\_\_\_\_  
 Signature of witness

Amelia Loughland, an Australian Legal Practitioner within the meaning of the *Legal Profession Uniform Law (NSW)* who has in force a current practising certificate

**Schedule**

No.

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

