

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 30/09/2024 7:09:21 PM AEST
Date Accepted for Filing: 30/09/2024 7:09:25 PM AEST
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.



Affidavit

No. 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

Affidavit of: **Leon Chung**
 Address: 161 Castlereagh Street, Sydney NSW 2000
 Occupation: Solicitor
 Date: 30 September 2024

I Leon Chung, Solicitor, affirm:

1. I am a partner at Herbert Smith Freehills (**HSF**), the solicitors for Energy Resources Australia Ltd (**ERA**), the Applicant in this proceeding. I have the carriage and conduct of this matter.
2. I make this affidavit in relation to the Interlocutory Application filed by the First and Second Respondents dated 24 September 2024. I have previously made four affidavits in this proceeding.
3. Shown to me at the time of affirming this affidavit is a bundle of documents marked "**Exhibit LC-5**". Where I refer to documents in this affidavit, I refer to their page number in Exhibit LC-5.

Notices to Produce to the First and Second Respondents

4. On 16 September 2024, HSF served by email unsealed copies of Notices to Produce on the Australian Government Solicitor (**AGS**), the legal representatives for the First

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

Address for service
 (include state and postcode) Level 34
161 Castlereagh St
Sydney NSW 2000

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

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

Respondent and the Second Respondent (together, the **Notices to Produce**). A copy of that email and its attachments is at page 1 of Exhibit LC-5.

5. Later on 16 September 2024, HSF served by email sealed copies of the Notices to Produce on the AGS. A copy of that email and its attachments is at page 8 of Exhibit LC-5.
6. On 24 September 2024, the AGS sent HSF a letter dated 25 September 2024 advising the Applicant that the First and Second Respondents had filed an interlocutory application seeking orders that the Notices to Produce be set aside (**Interlocutory Application**). The letter enclosed an unsealed interlocutory application and supporting affidavit. A copy of the letter (excluding its enclosures) is at page 17 of Exhibit LC-5.
7. On 26 September, the AGS served sealed copies of the Interlocutory Application and supporting affidavit of Madisen Anne Scott affirmed 24 September 2024.
8. On 29 September 2024, HSF sent an email to the AGS enclosing revised versions of the Notices to Produce which were marked up with proposed limitations as to both time and custodian. A copy of that email and its attachments is at page 19 of Exhibit LC-5.

Statement of reasons

9. Further to paragraphs 46 to 61 of the Affidavit of Brad Welsh affirmed 7 August 2024 (and the documents referred to therein):
 - (a) On 3 September 2024, ERA sent a letter to the First Respondent requesting a written statement of reasons for her decision to advise the Third Respondent to refuse ERA's application for renewal of Jabiluka MLN1. A copy of that letter is at page 27 of Exhibit LC-5.
 - (b) On 17 September 2024, the AGS sent a letter to HSF, copied to Brad Welsh (CEO of ERA). A copy of that letter is at page 28 of Exhibit LC-5.
 - (c) On 18 September 2024, HSF sent a letter to the AGS responding to the letter of 17 September 2024. A copy of that letter is at page 30 of Exhibit LC-5. No response has been received to this letter as at the date of this affidavit.

The Speech

10. On 27 July 2024, the Prime Minister, the Hon Anthony Albanese MP gave a speech at the New South Wales Labor Annual Conference (**Speech**).
11. The Speech was recorded by video and published on the Labor Facebook page which is available at the following link:

<https://www.facebook.com/share/v/NGfVqfS3PehW7N5U/?mibextid=WC7FNe>. The

Speech begins at 10:47 minutes of the livestream.




12. On 5 September, the Applicant issued Notices to Admit to the First Respondent and the Second Respondent (together, the **Notices to Admit**). Save for the party to which it was addressed, the Notices to Admit were identical in form and required the First and Second Respondent to admit, for the purpose of the proceeding, the truth of various facts, including relevantly at paragraph 15:

On 27 July 2024, during the NSW State Labor Conference, the Prime Minister gave a speech which included the following words:

“Over the past 18 months, Linda, Tanya Plibersek and myself have met with leaders and representatives of the Mirarr people, the traditional owners of the Jabiluka site in Kakadu. Madeleine King, our Resources Minister, has joined us.

They were seeking a guarantee that there would never be uranium mining on their land.

....

Today, I am proud to announce that our Government will be working with the traditional owners to make Jabiluka part of Kakadu National Park, once and for all.

This means there will never be mining at Jabiluka.

The Mirarr people have loved and cared for their land for more than 60,000 years.

Our Government will work with them to keep it safe for all time.”

13. On 17 September 2024, the AGS sent a letter to HSF raising objections about a number of paragraphs of the Notices to Admit and enclosing a table setting out its preliminary position in relation to each paragraph of the Notices.
14. On 19 September 2024, HSF sent a letter to the AGS stating that, while the Applicant did not agree with the objections raised by the AGS, the Applicant withdrew, on a without admissions basis, a number of paragraphs from the Notices to Admit. Paragraph 15 was not withdrawn. The letter enclosed marked up Notices to Admit to the First Respondent and the Second Respondent which were revised to exclude the paragraphs identified as withdrawn in the letter (together, the **Revised Notices to Admit**). A copy of that letter and its enclosures is at page 31 of Exhibit LC-5.
15. On 19 September 2024, the AGS served on HSF a Notice of Dispute from the First and Second Respondents (**Notice of Dispute**). Pursuant to the Notice of Dispute, the First and Second Respondents admitted paragraph 15 of the Revised Notices to Admit, subject to the following amendments in underlined text:

Over the past 18 months, Linda, Tanya Plibersek and myself have met with leaders and representatives of the Mirarr people, the traditional owners of the Jabiluka site in Kakadu. Madeleine King, our Resources Minister, has joined with us.

They were seeking a guarantee that there would never be uranium mining on their land.

....

Today, I am proud to announce that our Government will be working with the traditional owners to make Jabiluka part of Kakadu National Park, once and for all.

This means there will never be mining at Jabiluka.

The Mirarr people have loved and cared for their land for more than 60,000 years.

Our Government will work with them to keep it safe for all time.

A copy of the Notice of Dispute is at page 55 of Exhibit LC-5.

16. On 15 August 2024, the First Respondent produced a bundle of documents in response to category 3 of the Notice to Produce dated 6 August 2024 issued by the Applicant. The bundle included a “Yellow” memorandum from Marie Illman and Ben Latham (Advisers to the First Respondent) with a “Yellow date” of 25 July 2024. A copy of this document is at page 59 of Exhibit LC-5.
17. On 17 September 2024, the Third and Fourth Respondents produced a number of documents in response to category 7 set out in Annexure A to the orders of Justice Kennett made 9 September 2024 (**Production Orders**). Those documents included a text message exchange between Armando Padovan (Senior Executive Director, Mines Branch, Department of Industry Tourism and Trade) and Anne Tan (Deputy CEO of Mining and Energy, Department of Industry Tourism and Trade) on 26 July 2024. A copy of this document is at page 61 of Exhibit LC-6.
18. On 23 September 2024, the First and Second Respondents produced in response to category 6(a) set out in Annexure A of the Production Orders a letter from the First Respondent to the Seventh Respondent and Thalia van den Boogaard dated 10 May 2024. A copy of this letter is at page 66 of Exhibit LC-5.
19. On 27 September 2024, the First and Second Respondents produced a number of documents in response to category 1 set out in Annexure A to the Production Orders. Those documents included:
- (a) a document stamped “JBK.0001.0001.2221”, which is an email chain between Jyah Strachan and Angela Kraatz on 17 July 2024; and
 - (b) a document stamped “JBK.0001.0001.0762”, which is an email from Kym Moore to Christie Renton and Jyah Strachan (copying Angela Kraatz) on 26 July 2024 at 8.31am.
- Copies of these documents are at pages 68 and 71 of Exhibit LC-5.
20. On 27 September 2024, the Sixth Respondent produced a bundle of documents in response to the Notice to Produce dated 13 September 2024 issued by the Applicant. The bundle included:
- (a) a handwritten file note of a meeting on 20 March 2024 between Minister King, various Mirarr Traditional Owners and individuals from the Gundjeihmi Aboriginal Corporation.

(b) a letter from the Assistant Minister to the Prime Minister to Justin O'Brien, the Seventh Respondent and Samuel Bush-Blanasi dated 16 March 2023.

(c) a letter from the Hon Tanya Plibersek MP, Minister for the Environment and Water, to Justin O'Brien dated 31 May 2023.

A copy of the file note and letter are at pages 72, 77 and 79 of Exhibit LC-5.

21. I am informed by Brad Welsh (CEO of ERA) and believe that a copy of the Speech was circulated by the Prime Minister's Office to the media under embargo on 26 July 2024 prior to the NSW State Labor Conference. A copy of the Speech as circulated under embargo on 26 July 2024 is at page 81 of Exhibit LC 5.

22. On 30 September 2024, I caused searches to be undertaken for media articles referring to the Speech published prior to the Prime Minister making the Speech on 27 July 2024. Those searches have identified:

(a) An ABC News article published on 26 July 2024 with headline "Jabiluka uranium mine to become part of Kakadu National Park in historic win for Mirarr traditional owners". A copy of that article is at page 100 of Exhibit LC-5.

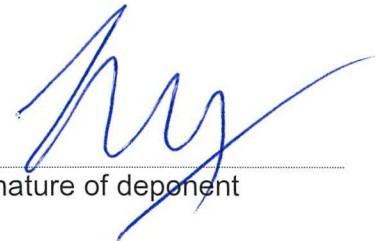
(b) A Sky News article published on 27 July 2024 at 7:18am with headline "Breaking News: Anthony Albanese to commit to protecting Jabiluka by incorporating it in Kakadu National Park". A copy of that article is at page 107 of Exhibit LC-5.

(c) An article by The Australia published on 27 July 2024 with headline "Heritage listing for Jabiluka mine site". A copy of that article is at page 111 of Exhibit LC-5.

Affirmed by the deponent)
at Sydney)
in New South Wales)
on 30 September 2024)
Before me:)



Signature of witness



Signature of deponent

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

Schedule

No. 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

