

## 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 of Leon Chung affirmed 10 May 2025

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: 10 May 2025

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 ERA's application to vacate the hearing of this proceeding, which is listed to commence on 12 May 2025 on an estimate of four days (with one day held in reserve), and re-list it for case management on a date not before 9 June 2025. I have previously made seven affidavits in this proceeding.
3. Nothing contained in this affidavit is intended to waive any privilege in any material and I am not authorised by ERA to waive any such privilege.
4. Shown to me at the time of affirming this affidavit is a bundle of documents marked "**Exhibit LC-9**". Where I refer to documents in this affidavit, I refer to their page number in Exhibit LC-9.

Filed on behalf of	Energy Resources of Australia Ltd ABN 71 008 550 865, Applicant	
Prepared by	Leon Chung	
Law firm	Herbert Smith Freehills	
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(include state and postcode) Level 34  
161 Castlereagh St  
Sydney NSW 2000

## Proposed compulsory acquisition

5. On 6 August 2024, ERA commenced this proceeding by originating application for judicial review.
6. On 29 August 2024, ERA announced a non-underwritten pro-rata renounceable entitlement offer to raise up to approximately \$880 million at an offer price of \$0.002 per share (**Entitlement Offer**). A copy of the announcement is at pages 1-8 of Exhibit LC-9. Among other things, the announcement stated that ERA had “secured binding pre-commitments from Rio Tinto who [had] committed to subscribe for approximately \$760 million in total”. It also stated:

*In the event that Rio Tinto beneficially owns 90% or more of the shares in ERA, Rio Tinto would have the option to compulsorily acquire the remaining ERA shares under Part 6A.2 of the Corporations Act and has indicated an intention to do so if the option is available.*

7. Also on 29 August 2024, the Applicant published (among other things) an investor presentation for the Entitlement Offer. A copy of the presentation is at pages 9-50 of Exhibit LC-9. Among other things, the investor presentation included (at pages 41 to 42) the following intention statement from Rio Tinto:

*Rio Tinto notes:*

- *the announcement made by the Northern Territory Government on 26 July 2024 regarding the decision not to renew the Jabiluka lease; and*
- *the announcement by the Australian Government on 27 July 2024 that it advised the Northern Territory Government that the Jabiluka mineral lease should not be renewed and it would begin the process on incorporating Jabiluka into the Kakadu National Park.*

*Rio Tinto notes that the ERA IBC is deciding on the most appropriate course of action for ERA in response to the Jabiluka lease renewal decision and has lodged an application for judicial review of the decision. The ERA IBC's independent role in determining this will not be impacted as a result of this Entitlement Offer. Rio Tinto does not have any intention to independently seek compensation for, appeal or seek judicial review of the decision of the Northern Territory Government. If Rio Tinto proceeds with compulsory acquisition (on the basis set out below), in accordance with the long stated views of the Mirarr People, it does not have any intention to invest in mining or development of the Jabiluka deposit.*




8. The statement set out in paragraph 7 above was later repeated in an Entitlement Offer Information Booklet published to the ASX on 16 October 2024.
9. On 18 November 2024, ERA published a market announcement confirming the completion of the Entitlement Offer and referring to the commencement of a shortfall bookbuild process which was to occur after market close. A copy of that announcement release is at pages 51-52 of Exhibit LC-9.
10. On 19 November 2024, ERA published a market announcement confirming the completion of the shortfall bookbuild process. A copy of that announcement release is at pages 53-54 of Exhibit LC-9.
11. Also on 19 November 2024, Rio Tinto published a media release regarding its ownership in ERA following the completion of the Entitlement Offer, which was also released by ERA to the ASX. The media release stated:

*As a result of Rio Tinto taking up its pro rata entitlements in the entitlement offer and the level of participation by other ERA shareholders, Rio Tinto will hold over 98% of ERA's shares.*

*In accordance with Rio Tinto's previously stated intentions published in ERA's entitlement offer information booklet, Rio Tinto intends to proceed under Part 6A.2 of the Corporations Act 2001 (Cth) with the compulsory acquisition of all remaining ERA shares that it does not currently own. It is proposing to do so at A\$0.002 per ERA share, being the same price as the entitlement offer.*

*[...]*

*If compulsory acquisition is completed, Rio Tinto has no intention to invest in mining or development of the Jabiluka deposit.*

A copy of that media release is at pages 55-57 of Exhibit LC-9.

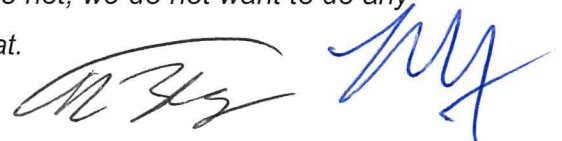
12. On 11 April 2025, North Limited (ACN 005 233 689) (**North Limited**), a wholly-owned subsidiary of Rio Tinto, lodged:
  - (a) a Notice of Compulsory Acquisition (ASIC Form 6024);
  - (b) a letter to ERA's shareholders to notify that North Limited was exercising its right to commence the process of compulsorily acquiring the remaining ordinary shares in ERA not already owned by itself and its related bodies corporate (together, the **Outstanding Shares**) at \$0.002 per share. The letter also stated that:

- i. any shareholders who wish to object to the acquisition may complete and return the enclosed objection form so that it is received by 19 May 2025; and
  - ii. if North Limited receives objection notices from shareholders holding 10% or more of the Outstanding Shares before the end of the objection period, North Limited intends to apply for Court approval for the acquisition of all remaining ERA securities in accordance with section 664F of the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (c) a template objection form under Part 6A.2 of the Corporations Act; and
  - (d) an independent expert report prepared by Lonergan Edwards & Associates Limited pursuant to Part 6A.4 of the Corporations Act, which among other things included a valuation in respect of Jabiluka MLN-1 (being the mineral lease the subject of ERA's application for judicial review).

Copies of those documents are at pages 58-373 of Exhibit LC-9.

13. Consistent with paragraph 12(b) above, I am informed by David Nolan (ERA's General Counsel) and believe that:
- (a) the period during which shareholders in ERA may return an objection form in respect of the acquisition of ERA by North Limited is due to end on 19 May 2025;
  - (b) if, before the end of the objection period, objection notices are received from shareholders holding fewer than 10% of the Outstanding Shares, then the process of North Limited compulsorily acquiring the Outstanding Shares will likely complete in or around early June 2025; and
  - (c) if before the end of the objection period, objection notices are received from shareholders holding 10% or more of the Outstanding Shares, then as noted in paragraph 12(b)ii above the process of North Limited compulsorily acquiring the Outstanding Shares will likely involve court proceedings. The timing for the resolution of any such proceedings is not known.
14. On 1 May 2025, Rio Tinto held its Annual General Meeting. A copy of the transcript of that meeting is at pages 374-407 of Exhibit LC-9. It records Dominic Barton, Chair of the Board of Directors of Rio Tinto, as having said the following in response to a question as to whether Rio Tinto "remain[s] committed to respecting the Mirarr wishes not to mine Jabiluka":

*... I think, I hope, and I'm going to repeat what I've said now, I think in every one of these AGMs I've been in our commitment to not, we do not want to do any mining in Jabiluka and we're committed to that.*



*There are some legal matters as you alluded to that relate to the Northern Territories government decision not to renew the Jabiluka mineral lease. That's being managed by the ERA independent board committee. We're not a party to those proceedings.*

*But we are moving ahead on the compulsory acquisition of all the remaining shares in ERA that we don't already own and we've lodged the necessary documents and provided them to ERA shareholders. And the ERA shareholders have until May 19th, so less than three weeks from today to submit an objection.*

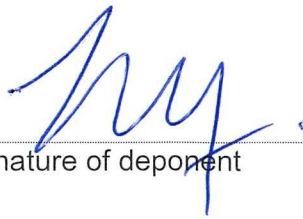
*When that process is complete, we will control the company and again, we are completely aligned with the Mirarr on the permanent protection of the Jabiluka.*


**Recent without prejudice discussions between the parties**

15. On 8 May 2025, counsel for the Second Respondent approached counsel for ERA on a without prejudice basis in relation to ERA's application for judicial review. From 8 May to 10 May 2025, there were without prejudice discussions between the parties in relation to ERA's application for judicial review.
16. As a result of those discussions, on 10 May 2025, the parties sent an agreed communication to the Court. A copy of that email is at page 408 of Exhibit LC-9.
17. I am informed by Mr Nolan and believe that:
  - (a) ERA now considers that, following the discussions referred to in paragraph 15 above, there are good prospects that the proceedings can be resolved by agreement of all parties in (but not before) early June 2025;
  - (b) as at the date of this affidavit, objection notices have been received from shareholders holding less than 10% of the Outstanding Shares; and
  - (c) ERA does not know, and is unlikely to know for certain, whether objection notices will be received from shareholders holding more than 10% of the Outstanding Shares until such time as the objection period expires on 19 May 2025 (unless that threshold is passed at an earlier date).
18. Based on the matters outlined in this affidavit, I am also informed by Mr Nolan and believe that ERA considers it to be in the best interests of all of its shareholders for the status quo to be preserved pending determination of the compulsory acquisition process outlined above.



Affirmed by the deponent )  
at Sydney )  
in New South Wales )  
on 10 May 2025 )  
Before me: )

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

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

Major Quan Zhang, 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**

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

Two handwritten signatures in blue ink are located at the bottom right of the page. The signature on the left is more stylized and cursive, while the one on the right is more legible and appears to be a first name followed by a surname.