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
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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.

ENERGY RESOURCES OF AUSTRALIA LTD v
MINISTER FOR RESOURCES AND MINISTER FOR NORTHERN AUSTRALIA & ORS
(NSD1056/2024)

SUBMISSIONS OF ENERGY RESOURCES OF AUSTRALIA LTD
IN SUPPORT OF APPLICATION TO VACATE THE TRIAL DATES

INTRODUCTION

1. The applicant (**ERA**) applies to vacate the dates fixed for the trial of these proceedings on 12-16 May 2025.

2. ERA seeks leave to:

   (a) file in Court and move on the Interlocutory Application dated 10 May 2025;

   (b) in support of the application, file in Court and read the affidavit of Leon Chung affirmed 10 May 2025 (**Affidavit**); and tender Exhibit LC-9 (**Exhibit**).

3. ERA appreciates that it could only be in very unusual circumstances that an application to vacate a 4 or 5 day trial, made at the time of the scheduled commencement of the trial, would be allowed by the Court. As is apparent from the Affidavit, and from the explanation provided below, such circumstances exist in this case.

4. Each of the respondents has indicated consent to the application to vacate.

SUBMISSIONS

The relevant circumstances

5. The Affidavit sets out a snapshot of the circumstances relevant to the application to vacate. The following matters can be highlighted.

6. In August 2024, Rio Tinto committed to subscribe for most of the shares available in ERA's Entitlement Offer. At that time, Rio Tinto expressed the intentions set out in the extract in Affidavit at [7], which were repeated in November 2024 in the extract in Affidavit at [11], "*if compulsory acquisition is completed*".

7. On 11 April 2025 the first formal step to achieve that goal was taken, namely a wholly-owned subsidiary of Rio Tinto, North Limited, lodged a notice of compulsory acquisition of shares in ERA not already owned by Rio Tinto and its related bodies

corporate: Affidavit at [12]. Rio Tinto's most recent public expression of its position in relation to mining at Jabiluka is set out in the extract in Affidavit at [14].

8. The timing of what can and might now occur is set out in the Affidavit at [13] and [17].

9. If objection notices are not received by 19 May 2025 from shareholders holding 10% or more of the Outstanding Shares, as is presently the position, then the compulsory acquisition of North Limited will likely complete in or around early June 2025. In that event, ERA would become (indirectly) wholly owned by Rio Tinto, which would be in a position to cause North Limited to control the affairs of ERA in accordance with Rio Tinto's stated intentions.

10. Recent without prejudice discussions have occurred between the parties (Affidavit at [15]) after which ERA gave notice to the Court, by way of an agreed email to the Associate on 10 May 2025, of the proposed application: Exhibit, p 408.

11. For the reasons set out in the Affidavit, and as indicated in the Affidavit at [17(a)], ERA now considers – following the without prejudice discussions held on 8-10 May 2025 – that there are good prospects that the proceedings can be resolved by agreement of all parties in (but not before) early June 2025. The qualification "*but not before*" reflects the consideration of ERA that clarity as to the outcome of the compulsory acquisition process (including whether sufficient objection notices are received before the end of the objection period) and its implications for this proceeding are likely to be apparent by that time, and it is in the best interest of all of its shareholders for the status quo to be preserved in the meantime (namely, the pendency of the proceedings): Affidavit at [18].

Appropriate to vacate the hearing

12. It is appropriate to vacate the hearing in the very unusual circmstances of the case.

13. In deciding whether to vacate, the Court should consider *"issues particular to the parties and the circumstances of the case"* and *"how the grant or refusal of an adjournment will promote the overarching purpose of the civil practice and procedure provisions"*: *Luck v Chief Executive Officer of Centrelink* [2015] FCAFC 75 at [42].

14. As further submitted below, the consent of all parties to the application is a significant matter, but the conduct of the proceedings "*is firmly in the hands of the court*" subject

to the statutory requirements and Court rules applicable to the exercise of case management decisions: *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management* (2013) 250 CLR 303, [2013] HCA 46 at [56]-[57].

15. ERA contends that vacating the trial best promotes the overarching purpose of the civil practice and procedure provisions, as stated in s 37M of the *Federal Court of Australia Act 1976* (Cth), to facilitate the resolution of disputes "*as quickly, inexpensively and efficiently as possible*".

16. The objective in s 37M(2)(b) of "*the efficient use of the judicial and administrative resources available for the purposes of the Court*" is promoted by vacating the trial. It would be an inefficient use of judicial resources in the extreme to conduct a 4 or 5 day trial, and perhaps then commence to write a reserved judgment, only for the matter to be resolved by agreement of the parties after trial. It is accepted that the strength of this consideration may be proportional to the confidence that the Court has in the occurrence and timing of future events, and in particular the risk that the matter will not be resolved by agreement of the parties as anticipated. However, one matter that is highly relevant to the Court's assessment of that risk is the respondents' consent to the application – the respondents surely are as averse as anyone to delay or inefficiency in the resolution of the current dispute, yet their assessment (reached, no doubt, after considering the matter with their legal advisers of substantial experience and ability) is that ERA's application is the appropriate step to take.

17. The objective in s 37M(2)(d) of "*the disposal of all proceedings in a timely manner*" would be promoted by vacating the trial. It is true that neither ERA nor the respondents can provide any guarantee to the Court that the proceedings will be disposed of without any further time in Court (and, if so, when such disposition might occur). Nevertheless, the Court would accept that the objective circumstances indicated in the Affidavit, together with the affidavit evidence based on those circumstances and the (undisclosed and undisclosable) content of without prejudice discussions between the parties and that ERA considers that there are good prospects that the proceedings can be resolved by agreement of all parties in late May or early June 2025, provide strong reasons to proceed on the basis that there is only a low risk that the proceedings will not be disposed of in a timely manner.

18. Further, the efficiency objective in s 37M includes efficiency from the perspective of the parties and witnesses. It is a material consideration that each party agrees to the vacation of the trial, rather than devoting 4 or 5 days of attention and expense to the conduct of a trial this week. It is also a material consideration that at least one witness on each side faces substantial cross-examination if the trial proceeds, and it is in the interests of those witnesses and their organisations that the imposition of cross-examination not occur in circumstances in which it is likely not to be necessary or of utility.

19. As indicated in the correspondence to the Associate on 10 May 2025, the parties are agreed that all questions of costs and costs thrown away be deferred for agreement / further agreement or determination after the next directions hearing.

20. ERA requests that the proceedings be listed for case management on a date not before 9 June 2025.



R LANCASTER SC **D HUME** **C WINNETT**

COUNSEL FOR ENERGY RESOURCES OF AUSTRALIA LTD

12 MAY 2025