

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged:	Originating Application for Judicial Review - Form 66 - Rule 31.01(1)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	31/03/2025 9:11:56 AM AEDT
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File Number:	TAD15/2025
File Title:	BOB BROWN FOUNDATION INC. v MINISTER FOR THE ENVIRONMENT (COMMONWEALTH)
Registry:	TASMANIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*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.



## Originating application for judicial review

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

Federal Court of Australia  
District Registry: Tasmania  
Division: General

### **Bob Brown Foundation Inc**

Applicant

### **Minister for the Environment and Water**

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:** [Registry will insert time and date]

**Place:** [address of Court]

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Filed on behalf of (name & role of party) Applicant, Bob Brown Foundation Inc.  
Prepared by (name of person/lawyer) Roland Browne  
Law firm (if applicable) FitzGerald and Browne  
Tel 03 6224 6777 Fax 03 62246755  
Email rolandbrowne@fablawyers.net.au  
**Address for service** Lev 2, 115 Collins Street Hobart, 7000, Tasmania  
(include state and postcode)



Date:

.....  
Signed by an officer acting with the authority  
of the District Registrar

The Applicant applies to the Court to review the failure of the Respondent to reconsider the decision made on 3 October 2012 that the marine farming expansion on Macquarie Harbour was not a controlled action if undertaken in a particular manner (**the 2012 Decision**), and to either confirm the 2012 Decision or revoke the 2012 Decision and substitute a new decision, pursuant to ss 78 and 78C of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**).

#### **Details of claim**

The Applicant is aggrieved by the failure because:

1. The Applicant made a request for reconsideration of the 2012 Decision pursuant to s 78A(1) of the EPBC Act on 25 July 2023, which the Respondent acknowledged as one of three requests that triggered the duty to reconsider the 2012 Decision under s 78 of the EPBC Act.

#### **Grounds of application**

1. The Respondent failed to make a decision on the reconsideration of the 2012 Decision within the time specified in s 78C(1) of the EPBC Act.

##### **Particulars**

- (a) The Applicant made a request in writing to the Minister on 25 July 2023 for reconsideration of the 2012 Decision, pursuant to ss 78A(1) of the EPBC Act.

- (b) Section 78C of the EPBC Act provides that where a request for reconsideration has been received, the Minister must reconsider the decision and either confirm the decision or revoke the decision and substitute a new decision “as soon as practicable after the end of the time within which information or comments may be given under section 78B”.



- (c) The request for reconsideration was provided to the relevant State and Commonwealth Ministers and their comments invited pursuant to s 78B(4) and (5) of the EPBC Act on or before 30 November 2023.
- (d) The request for reconsideration was provided to the proponents of the action and their comments invited pursuant to s 78B(2) of the EPBC Act on or before 30 November 2023.
- (e) The invitation for public comment pursuant to s 78B(6) of the EPBC Act was made on 4 December 2023.
- (f) The time within which comments may be given under s 78B of the EPBC Act expired on 18 December 2023, being 10 business days after last of the invitations under s 78B was given, or alternatively, on 2 February 2024, being the end date of the public consultation period advertised by the Respondent.
- (g) The statutory duty to make a decision on the reconsideration as soon as practicable is to be construed by reference to the object and purpose of the EPBC Act, the subject matter of the decision and the information before the Respondent, including the immediate threat to a listed threatened species.
- (h) Section 78(3A) of the EPBC Act (once that provision comes into force) does not apply to preclude the Minister from revoking the 2012 Decision because:
  - (i) the way in which the action was being taken had not been ongoing or recurring for at least 5 years at the time the request was made, within the meaning of s 78(3A)(d)(i) of the EPBC Act; and
  - (ii) such changes to the way the action was being taken during the period before the request was made include but are not limited to changes in the arrangement of sea pens, including aggregation of lease areas between operators and changes to fallowing periods of lease areas, changes in the operations of fish farms including changes in harvesting strategies, biomass stocking and biomass caps, changes in the feeding of fish in the farms, managing waste in and from the farms, managing the health of fish in the farms and managing predators of fish in the farms.



- (i) The Respondent has failed to make a decision within the time specified in s 78C of the EPBC Act.
- (j) Alternatively, the Respondent has failed to discharge her statutory duty to make a decision under s 78C of the EPBC Act within a reasonable time.

### Orders sought

1. An order pursuant to s 16(3)(a) of the *Administrative Decisions (Judicial Review) Act 1977* directing the Respondent to make one of the two permissible decisions under s 78C(1)(b) of the EPBC Act within 14 days of the date of the Court's order.
2. In the alternative, an order in the nature of mandamus pursuant to s 39B of the *Judiciary Act 1903*, directing the Respondent to make one of the two permissible decisions under s 78C(1)(b) of the EPBC Act within 14 days of the date of the Court's order.
3. The Respondent pay the Applicant's costs of and incidental to the proceeding.

### Applicant's address

The Applicant's address for service is:

Place: FitzGerald and Browne Lawyers

Lev 2, 115 Collins Street,

Hobart Tasmania, 7000

Email: rolandbrowne@fablawyers.net.au

The Applicant's address is Lev 1, 116 Bathurst Street, Hobart, Tasmania 7000

### Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 31 March 2025

A handwritten signature in blue ink that reads 'Roland Browne'.

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Signed by

Solicitor for the Applicant