

## 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: 10/10/2025 3:21:02 PM AEDT  
Date Accepted for Filing: 15/10/2025 1:16:51 PM AEDT  
File Number: VID1356/2025  
File Title: AUSTRALIAN CONSERVATION FOUNDATION INC. v MINISTER FOR  
THE ENVIRONMENT AND WATER & ANOR  
Registry: VICTORIA 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 2025

Federal Court of Australia  
District Registry: Victoria  
Division: General

### **Australian Conservation Foundation Inc.**

Applicant

**Minister for the Environment and Water** and another named in the schedule

Respondents

To the First and Second Respondents

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]

Date:

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

Filed on behalf of (name & role of party) Australian Conservation Foundation Inc., Applicant

Prepared by (name of person/lawyer) Cecile Bester

Law firm (if applicable) Environmental Justice Australia

Tel (03) 8341 3140 Fax \_\_\_\_\_

cecile.bester@envirojustice.org.au

Email inshani.ward@envirojustice.org.au

**Address for service** c/o Environmental Justice Australia, Suite 301, Level 3

(include state and postcode) 60 Leicester Street, Carlton, Victoria 3053



## The application

The Applicant applies to the Court, pursuant to s 5(1) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and ss 39B(1) and (1A)(c) of the *Judiciary Act 1903* (Cth) to review the decision of the First Respondent (**Minister**) under ss 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), made on 12 September 2025, to approve the Second Respondent (**Woodside**) taking the action described as the North West Shelf (**NWS**) Project Extension (**NWS Project Extension**) (EPBC 2018/8335) (**Decision**).

## Details of claim

### Standing

1. The Applicant is a person aggrieved by the decision pursuant to s 487(3) of the EPBC Act in that:
  - a. The Applicant is Australia's national environmental organisation. It is an incorporated association under the *Associations Incorporation Act 1991* (ACT) and a registered charity (ABN 22 007 498 482).
  - b. Since 1965, and in the 2 years immediately preceding the decision, the Applicant has engaged in a series of activities for protection or conservation of the environment.
  - c. In particular, in relation to the Decision and the history of the NWS Project Extension decision-making process:
    - i. In November 2022, the Applicant made a submission in response to an invitation for public comment, concerning a request for reconsideration under s 78 of the EPBC Act.
    - ii. The NWS Project Extension was referred by the Minister for assessment in accordance with an "accredited assessment process" under the *Environmental Protection Act 1986* (WA). The Applicant made submissions and was an active participant in the statutory appeal process under that legislation.
    - iii. The Applicant wrote to the Minister on various occasions expressing its concerns about the environmental impacts of the proposed action, including a detailed letter on 20 December 2024 and provision of an expert report on 13 March 2025.
  - d. At the time of the Decision, the Applicant's objects and purpose, as set out in cl 2 of its Constitution, included protection and conservation of the environment.



## Grounds of application

### Ground 1

2. In making the Decision, and contrary to s 136(5) of the EPBC Act, the Minister considered a matter that the Minister was not required or permitted by Div 1 of Pt 9 of the EPBC Act to consider, namely, the economic benefits of the “Browse to North West Shelf Development”.

#### Particulars

- a. The Browse to North West Shelf Development is a separate proposed action under the EPBC Act, for which Woodside is the proponent, and which has not been approved: Minister’s **Reasons** for Decision, paragraph [17].
- b. The Reasons state at paragraph [250(c)]:
 

“I consider that the proposed action would result in significant economic benefits to the regional, State and National Communities, including

[...]

  - (c) Combined, the Browse to North West Shelf Development and NWS Project Extension is estimated to:
    - (i) contribute \$6.6 billion annually to the Gross Domestic Profit of Australia between the years 2019-2063 (\$289 billion in total), of which 99% will be in Western Australia (using 2018 figures). This annual contribution is equivalent to 0.25 percent of Australia’s 2023-2024 financial year GDP \$2.604.2 billion (Source: ABS).
    - (ii) have a capital expenditure of \$36 billion in Western Australia between the years 2019-2063, including \$8.6 billion expenditure on the NWS Project Extension, and have an annual average operating expenditure in WA of \$493 million;
    - (iii) generate approximately 1800 jobs during construction, and an average of 720 jobs, including up to 320 jobs in the Karratha region, during operation; and
    - (iv) indirectly, create an average of more than 2700 jobs per annum between 2019 and 2063, with almost 1400 jobs created in Karratha and Broome (using 2018 figures), and \$50 million on localised spending in Karratha.”
- c. The Reasons state at paragraph [251]:



“[...] I note that, as part of Woodside’s potential Browse to NSW development, the proponent states that domestic gas volumes of more than 200TJ/d could be processed through KGP infrastructure, demonstrating the long-term value of this facility to the WA energy market.”

## **Ground 2**

3. The Decision was not authorised pursuant to ss 130(1), 133 and 134 of the EPBC Act, being the Minister’s powers to approve the NWS Project Extension with conditions, because the Decision impermissibly leaves undetermined the substance of a critical aspect of the action that affects the impact of it, namely, the composition of third-party feed gas composition and resulting air emissions.

### **Particulars**

- a. At present, the NWS Project facilities are only authorised to process natural gas and other fluids from the North West Shelf Joint Venture (**NWSJV**) field resource.
- b. A critical aspect of the NWS Project Extension is the long-term processing of “third party gas and fluids” from sources other than the NWSJV field resource.
- c. The “key issue for consideration in this assessment is the impact of air emissions [as a result of the NWS Project Extension] on the rock art” at the Dampier Archipelago: Reasons at [75].
- d. The NWS Project Extension will include, as a result of the processing of third-party gas and fluids, “changes to feed gas composition (including changed content of inerts, hydrocarbons and other components) and composition of environmental discharges and emissions ... as third-party gas and fluids may differ from existing NWSJV fields”: Reasons at [8].
- e. At present, “the degree of emissions similarity or difference is unknown for third party gas providers”: Reasons at [106], and see generally [105]-[110]; [212].
- f. Approval conditions 5, 6, 7 and 8 of the Decision impose restrictions on particular emissions types, in light of “the proponent’s limitations and the strength of evidence per type of emission”: Decision, approval conditions 5, 6, 7 and 8; Reasons at [175].
- g. Approval condition 4 requires Woodside to prepare and implement an Air Quality Management Plan which, amongst other things, “describes and quantifies all of the expected air emissions from the proposal”, the concept of “air emissions” being undefined: Decision, approval condition 4, read with condition 3-5(3) of the “Western Australian approval”, being the document titled Ministerial Statement 1233 dated 12 December 2024.



- h. Approval conditions 11(a) and 15(a) of the Decision requires Woodside to monitor and report on all “air emissions” (being a defined list of emissions covered by approval conditions 5, 6, 7 and 8).
- i. The Decision makes no provision for the Minister to assess the composition of third-party feed gas or the impacts of the air emissions as reported by Woodside in accordance with the conditions from time to time.
- j. Approval condition 16 of the Decision requires Woodside to notify the Department “if it detects that any air emission [as defined] arising from the Action has exceeded a limit specified in Conditions 5, 6, 7 or 8”.
- k. Approval condition 38 of the Decision requires Woodside to report to the Department the details of non-compliance with (amongst other things) the approval conditions, and to specify what corrective measures “[it] proposes to undertake”.
- l. There is no requirement in the approval conditions for Woodside actually to take those corrective measures, or otherwise respond to non-compliance with the approval conditions arising from new kinds of air emissions or impermissible levels of air emissions.
- m. Accordingly, a critical aspect of the NWS Project Extension, and the “key issue for consideration” in the Decision, being the composition of, and accordingly impact of, future air emissions on the rock art, was undetermined.

### **Ground 3**

- 4. The Decision was legally unreasonable, in that the Minister had no rational basis for being satisfied that the conditions of approval, in their totality, will make the impacts of the NWS Project Extension on the national heritage values of the Dampier Archipelago acceptable, in circumstances where:
  - a. the composition of emission types that are to be expected to be processed from third-party sources are unknown; and
  - b. the approval has effect until 31 December 2070.

### **Particulars**

- a. The Applicant refers to and repeats the particulars to paragraph 3 above.
- b. In deciding whether or not to approve the taking of the NWS Project Extension, the Minister had to assess whether the impacts of the action are acceptable and, if not, what conditions could result in those impacts being acceptable: *Friends of*



the *Gelorup Corridor Inc v Minister for the Environment and Water* (2023) 299 FCR 236 at [64].

- c. In imposing conditions on an approval, the Minister must be satisfied that the condition is necessary or convenient for protecting the national heritage values of the Dampier Archipelago, or repairing or mitigating damage to those values: ss 134(1), (2).
- d. Where the effect of the conditions is indeterminate because they leave significant issues to be ascertained at a later time, there is no rational basis for concluding that those conditions will make the impact of the NWS Project Extension acceptable: *Gelorup* at [65].
- e. The approval conditions leave a key aspect of the NWS Project Extension, namely, the composition of third-party gas feed and consequent air emissions over at least 40 years, to remain undetermined:
- f. In the premises, the Minister had no rational basis for concluding that the approval conditions, in their totality, would make the impacts of air emissions from NWS Project Extension on the national heritage values of the Dampier Archipelago acceptable.

#### **Ground 4**

5. The Minister erred in failing to take into account information he had about the physical effects of climate change on the national heritage values of the Dampier Archipelago.

#### **Particulars**

- a. In making the Decision, the Minister was required to consider “matters relevant to any matter protected by a provision ... the Minister ha[d] decided [was] a controlling provision for the action”: EPBC Act, s 136(1)(a). In doing so, he was required to “take into account ... any information he had on the relevant impacts of the proposed action”: EPBC Act, s 136(2)(e).
- b. The national heritage values of the Dampier Archipelago were matters protected by the provisions the Minister had decided were controlling provisions for the proposed action: Reasons at [55]. Accordingly, he was required to take into account any information he had on the relevant impacts of the proposed action on those values.
- c. The Minister had before him information about the physical effects of climate change on the national heritage values of the Dampier Archipelago: Reasons at [35]. He refused to take into account that information because he found that it



was “not about impacts the proposed action has or will have, or is likely to have, on ... protected matters”: Reasons at [39].

- d. The Minister made that finding on the basis that the proposed action is not a “substantial cause” (within the meaning of s 527E(1)(b) of the EPBC Act) of the physical effects of climate change on the national heritage values of the Dampier Archipelago: Reasons at [39], [80].
- e. The Minister made that further finding on two bases:
  - i. That the proposed action would not be likely to result in a “net increase” in greenhouse gas emissions and global average temperature and thus make a “net” contribution to the physical effects of climate change: Reasons at [39](a), read with the Minister’s reasons for the reconsideration decision dated 25 September 2025 (**Reconsideration Reasons**) at [174]; and
  - ii. Even if the proposed action would result in a net increase in global greenhouse gas emissions and global average temperature, any net contribution would be “very small” as a proportion of global greenhouse gas emissions and as a matter of raw global temperature increase: Reasons at [39](b), and Reconsideration Reasons at [178]-[183].
- f. Each basis was flawed in that each assumed that the phrase “substantial cause” within in s 527E(1)(b) required nothing more than an arithmetical analysis of (1) the gross amount of greenhouse gas emissions relevant to the proposed action; and (2) whether that amount was likely to be “netted off” by equivalent emissions from other sources or was simply “very small” as a proportion of global greenhouse gas emissions or as a matter of raw global temperature increase: cf *Environment Council of Central Queensland Inc v Minister for the Environment and Water* [2024] FCAFC 56 at [132].
- g. Properly construed, the phrase “substantial cause” in s 527E(1)(b) has a qualitative meaning that cannot be reduced to arithmetical analysis.
- h. In the premises, the Minister erred:
  - i. in finding that the proposed action was not a “substantial cause” of the physical effects of climate change on the national heritage values of the Dampier Archipelago; and, therefore
  - ii. in refusing to take into account of the physical effects of climate change on the national heritage values of the Dampier Archipelago.

**Orders sought**

1. An order quashing or setting aside the decision.
2. An order remitting the matter for reconsideration according to law.
3. Costs.
4. Any other order the Court considers appropriate.

**Applicant's address**

The Applicant's address for service is:

Place: c/o Environmental Justice Australia, solicitor, of Suite 301, Level 3, 60 Leicester Street,  
Carlton VIC 3053

Email: [cecile.bester@envirojustice.org.au](mailto:cecile.bester@envirojustice.org.au)

The Applicant's address is Level 1, 60 Leicester Street, Carlton VIC 3053

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 10 October 2025

A handwritten signature in blue ink that reads "C Bester".

---

Signed by Cecile Bester  
Lawyer for the Applicant



**Schedule**

No. of 2025

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Respondents**

Second Respondent: **Woodside Energy Ltd**  
**(ABN 63 005 482 986)**

Date: 10 October 2025