

11 September 2025

The Hon Murray Watt  
Senator and Minister for the Environment and Water  
PO Box 6100  
Senate  
Parliament House  
Canberra ACT 2600

By email: [REDACTED]

Dear Minister

## **Woodside's North West Shelf extension (EPBC Referral 2018/8335)**

1. We act for a number of clients who are concerned about the environmental, social and economic impacts of the abovenamed Project.
2. On behalf of our clients, we are instructed to bring to your attention your duties under international and domestic law as a representative of the Australian Government and as the decision-maker on the Project federally.

## ***Australia's international obligations***

3. As you are aware, on 23 July 2025, the International Court of Justice handed down its landmark Advisory Opinion on the Obligations of States in Respect of Climate Change.<sup>1</sup>
4. The Advisory Opinion confirms that Australia has an obligation to conduct its activities in a way that is consistent with the Paris goal of limiting global average temperature rise to 1.5 degrees Celsius. It states (emphasis added):

*[224] As a general matter, the Court notes that while the Paris Agreement provides for limiting the global average temperature increase to well below 2°C above pre-industrial levels as a goal and 1.5°C as an additional effort, **1.5°C has become the scientifically based consensus target under the Paris Agreement.***

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<sup>1</sup> International Court of Justice, *Advisory Opinion on the Obligations of States in Respect of Climate Change* (23 July 2025) <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>>

**Accordingly, the Court considers the 1.5°C threshold to be the parties' agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement.** The Court adds that this interpretation is consistent with Article 4, paragraph 1, of the Paris Agreement, which requires that mitigation measures be based on the "best available science"

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**[245] In light of the above, the Court considers that the discretion of parties in the preparation of their NDCs is limited. As such, in the exercise of their discretion, parties are obliged to exercise due diligence and ensure that their NDCs fulfil their obligations under the Paris Agreement and thus, when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels, as well as the overall objective of the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system"**

5. This obligation extends beyond the setting of Nationally Determined Contributions (**NDCs**) and includes the requirement to exercise due diligence in the granting of approvals for new and expanded fossil fuel projects. Paragraph 427 of the Advisory Opinion clearly states (**emphasis added**):

427. In considering the alleged difficulties in attributing actions or omissions to a State, the Court emphasizes at the outset that attribution is to be based on criteria determined by international law. In the Court's view, the "well-established rule of international law" that "the conduct of any organ of a State must be regarded as an act of that State" (Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 242, para. 213, citing Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I), p. 87, para. 62) is applicable in the context of climate change. **Failure of a State to take appropriate action to protect the climate system from GHG emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies – may constitute an internationally wrongful act which is attributable to that State.** The Court also emphasizes that the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases.

6. Australia is already one of the world's largest exporters of LNG and coal. The best available scientific evidence is clear – there is no room for new or expanded fossil fuel projects in a 1.5 degree-aligned world.<sup>2</sup> There is no

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<sup>2</sup> See, eg, International Energy Agency, *Net Zero Pathway: a global pathway to keep the 1.5C goal in reach* (2023 Update) <[https://iea.blob.core.windows.net/assets/8ad619b9-17aa-473d-8a2f-4b90846f5c19/NetZeroRoadmap\\_AGlobalPathwaytoKeepthe1.5CGoalinReach-2023Update.pdf](https://iea.blob.core.windows.net/assets/8ad619b9-17aa-473d-8a2f-4b90846f5c19/NetZeroRoadmap_AGlobalPathwaytoKeepthe1.5CGoalinReach-2023Update.pdf)>

doubt that the Project is inconsistent with limiting global average temperature rise to 1.5 degrees Celsius above pre-industrial levels.<sup>3</sup>

7. Approval of the Project will, on its face, constitute an internationally wrongful act in clear breach of established international legal principles. It would be clear evidence of a failure by Australia to exercise due diligence in avoiding the exacerbation of climate harms to other nation states, including our direct neighbours in the Pacific.
8. Any approval of the Project will substantially increase the likelihood that Australia becomes one of the first nations, if not the first, to be subject to a claim for damages arising from climate harms suffered by another nation state/s.
9. This is supported by today's reports<sup>4</sup> that Vanuatu's Climate Change Minister, the Hon. Ralph Regenvanu, has already expressed concerns that your proposed approval of the Project would constitute an internationally wrongful act, that could, according to the International Court of Justice, give rise to liability for Australia.

### ***Your statutory duties***

10. Domestically, in considering whether to approve the Project, you are also required to take account of relevant economic and social matters under s136 of the *Environment Protection and Biodiversity Conservation Act 1999*. These matters are mandatory preconditions to a valid exercise of your power to approve the Project.
11. In light of the complaint raised by Vanuatu today ahead of your proposed decision to approve the Project, the likely economic and social costs arising from any approval of the Project now include the real and not remote possibility that Australia will be subject to a claim for damages brought for breaches of international law for climate harms caused to another nation state/s. These matters must now be considered as part of your assessment of the social and economic matters relevant to the Project.
12. As an indicator of the scale of the economic and social risks to Australia associated with your proposed approval of the Project, we note that a 2023 analysis by the United Nations Environment Program found that, between 2000 and 2019, the world suffered at least \$2.8 trillion in loss and damage from climate change – that is, economic harm of around \$16 million per

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<sup>3</sup> See, eg, Climate Analytics, *Fossil Gas: a bridge to nowhere* (June 2022) <[https://ca1-clm.edcdn.com/assets/fossil\\_gas\\_a\\_bridge\\_to\\_nowhere.pdf?v=1679478107](https://ca1-clm.edcdn.com/assets/fossil_gas_a_bridge_to_nowhere.pdf?v=1679478107)>

<sup>4</sup> SBSNews, 'Wrongful act': Vanuatu warns Australia may break international law if gas project goes ahead (11 September 2025) <<https://www.sbs.com.au/news/article/wrongful-act-vanuatu-warns-australia-may-break-international-law-if-gas-project-goes-ahead/gk5isms7e>>

hour.<sup>5</sup> Extreme heat-related damages from the Project alone are estimated to be in the order of some \$176 billion globally.<sup>6</sup>

13. Before you determine the Project, our view is that you must obtain a detailed, relevant and specific analysis of the likely social and economic costs to the Australian government, economy and taxpayers that will arise as a result of any approval of the Project.
14. That analysis must include consideration of the risk that Australia will be pursued for damages arising from climate harms in connection with any approval of the Project in breach of established international legal principles as outlined in the ICJ Advisory Opinion.
15. That analysis must also include consideration of the social and economic costs of climate harms domestically and within the locality of the Project, as the Project will of course contribute to those costs as well.
16. Failure to address these matters in a genuine, realistic and considered way, that is based on detailed assessments of the social and economic costs of the proposed approval, may result in a breach of your statutory duty.
17. We **enclose** for your convenience copies of each of the papers referenced in this letter.

Yours faithfully

**Johnson Legal Pty Ltd**



Elaine Johnson  
**Director**

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<sup>5</sup> United Nations Environment Program, *Loss and Damage*, <<https://www.unep.org/topics/climate-action/loss-and-damage/about-loss-and-damage>>; See also Callahan, C.W., Mankin, J.S. "Carbon majors and the scientific case for climate liability." *Nature* **640**, 893–901 (2025) <<https://doi.org/10.1038/s41586-025-08751-3>>

<sup>66</sup> Climate Analytics, *The Full Implications of the North West Shelf decisions* (June 2025) <[https://ca1-clm.edcdn.com/assets/NorthWestShelf\\_Implications\\_2025.pdf?v=1749109607](https://ca1-clm.edcdn.com/assets/NorthWestShelf_Implications_2025.pdf?v=1749109607)>